No. 11155

United States

Circuit Court of Appeals

For the Ninth Circuit.

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court of the United States

Rotary Colorprint, 661 Howard Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:
ALFRED J. SCHWEPPE, ESQ.,
MAURICE R. McMICKEN, ESQ.,

For Comm'r.:
W. H. PAYNE, ESQ.,

Docket No. 4969

GEORGE W. YOST,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1944

May 17—Petition received and filed. Taxpayer notified. Fee paid.

" 18—Copy of petition served on General Counsel.

" 19—Request for hearing at Seattle, Washington filed by taxpayer. 5/31/44 granted.

Jun. 20—Answer filed by General Counsel.

" 23—Copy of answer served on taxpayer. Seattle, Washington.

Aug. 31—Hearing set Oct. 30, 1944 at Seattle, Washington.

1944

Nov. 2—Hearing had before Judge Mellott on merits. Submitted. Stipulation of facts filed. Petitioner's brief due in 45 days respondent's 30 days—20 days for reply.

Dec. 16—Brief filed by taxpayer. 12/18/44 copy served.

1945

Jan. 16—Brief filed by General Counsel.

" 17—Transcript of hearing of 11/2/44 filed.

Feb. 5—Reply brief filed by taxpayer. 2/5/45 copy served.

May 28—Opinion rendered Mellott J. Decision will be entered for the respondent.

" 28—Decision entered, Mellott J. Div. 12.

Aug. 24—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

" 25—Proof of service filed.

Sep. 17—Designation of record filed by taxpayer with proof of service thereon.

" 18—Copy of an order from 9th Circuit extending time to 10/31/45 to transmit the record filed.

" 18—Copy of an order from 9th Circuit directing the Clerk to transmit a complete record in Docket 4969 to this Court and an abbreviated record in Docket 4970 filed.

The Tax Court of the United States

Docket No. 4969

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency IT:90D:IG, dated March 23, 1944, and as a basis of this proceeding alleges as follows:

I.

The petitioner is an individual residing at Edmonds, Washington, and at all times herein mentioned was, and still is, the husband of Juanita Yost. Petitioner's separate income tax returns for the periods here involved, namely, for the calendar years 1940 and 1941, were filed with the Collector for the District of Washington, at Tacoma, Washington.

II.

The Notice of Deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on [2*] March 23, 1944.

III.

The taxes in controversy are income taxes for

*Page numbering appearing at top of page of original certified Transcript.

the calendar years 1940 and 1941, the total deficiency asserted being $1,174.14, made up of $75.44 deficiency for the year 1940 and $1,071.70 deficiency for the year 1941, whereas petitioner claims that the correct deficiency for 1940 is only $2.57, and that there is no deficiency for 1941, so that the amount in controversy is $1,171.57.

IV.

The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

1. Respondent erred in determining that $1,301.82 received by petitioner in 1940 as his community one-half of $2,603.65, paid by Robert L. Newell and Richard B. Newell, constituted ordinary income of petitioner.

2. Respondent erred in not holding that said amount of $1,301.82 so received by petitioner in 1940 was a long-term capital gain to petitioner.

3. Respondent erred in determining that $6,400.00 received by petitioner in 1941 as his community one-half of $12,800.00, paid by Robert L. Newell and Richard B. Newell, constituted ordinary income of petitioner.

4. Respondent erred in not holding that said amount of $6,400.00 so received by petitioner in 1941 was a long-term capital gain to petitioner.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

1. For a number of years prior to January 28, 1935, Richard B. Newell was draftsman and chief engineer for Heiser's, Inc., manufacturers of bus and truck bodies at Seattle, Washington; Robert L. Newell had been engaged in the [3] sale throughout the Pacific Northwest of bus and truck bodies manufactured by Wentworth & Irwin, of Portland, Oregon; and George W. Yost had been, and still is, engaged in the bus passenger transportation business in suburban Seattle as part owner and general manager of Suburban Transportation System.

2. For some time prior to January 28, 1935, the two Newells had discussed with Yost the formation of a new corporation to manufacture bus and truck bodies. As a result thereof the three of them, as incorporators, on January 28, 1935, organized for that purpose Tricoach Corporation, a Washington corporation, with its principal office at Seattle, and thereafter and at all times herein mentioned the three of them owned all of the outstanding stock of the corporation and they were the only officers and directors of the corporation.

3. Tricoach Corporation had an authorized capital of $50,000.00, composed of 1,000 shares of common stock of the par value of $50.00 each. In the articles of incorporation Yost subscribed for 150 shares and each of the Newells subscribed for 5 shares, which subscriptions were paid in cash at the first meeting of the incorporators, Yost paying

$7,500.00 out community funds of himself and wife, Juanita Yost, and the Newells paying $250.00 each.

4. At the first meeting of directors, held on February 6, 1935, Robert L. Newell was elected president and sales manager, Richard B. Newell was elected vice president and chief engineer, and George W. Yost was elected secretary, which offices they continued to hold during the entire operations of the company.

5. The salary of the two Newells was originally fixed at $250.00 per month and, in addition thereto, the two Newells and Yost were each to receive adjusted compensation at the end of each calendar year of one-third of that amount of the net profits for such year as was in excess of an amount necessary to pay eight per cent dividends on all stock outstanding at the beginning of the year.

6. For the eleven months of 1935, Tricoach Corporation had net sales of $82,805.39, but for the year it had a deficit of $1,068.18 after payment of $2,750.00 to each of the Newells in payment of their monthly salaries.

7. For the year 1936, Tricoach Corporation had net sales of $231,503.81 and a net income of $13,-812.05 before taxes but after deductions of salaries and adjusted compensation to the three stockholder-officers.

8. The Newells' salaries were increased to $300.00 [4] per month each as of July 1, 1936, so that the amounts paid as salaries and adjusted

compensation in 1936 to the Newells and Yost were as follows: Robert L. Newell, $13,440.95; Richard B. Newell, $13,440.95; and George W. Yost, $10,-140.95, or a total of $37,022.85 paid to the three officers in 1936.

9. Up to December 16, 1936, the outstanding capital of the corporation had remained at $8,000.00, the amount originally paid in. On that date the three stockholders made a contribution to capital, as paid-in surplus, in proportion to their stock-holdings, of sufficient to wipe out the 1935 deficit of $1,068.18 and then declared a dividend of $80.00 per share, but not to exceed the net profits for the year. As a result thereof, Yost received $11,-649.64 in dividends on his 150 shares, and each of the Newells received $388.32 on their respective 5 shares each.

10. On December 16, 1936, subscriptions were accepted for the issuance of additional stock as follows:

George W. Yost	348 shares	$17,400.00
Robert L. Newell	208 "	10,400.00
Richard B. Newell	208 "	10,400.00

which amounts were charged to their respective accounts and said stock issued, so that as of December 31, 1936, there were outstanding 924 shares of stock, or a total paid-in capital of $46,200.00.

11. For the year 1937, Tricoach Corporation had net sales of $341,887.18 and a net income of $17,-762.56 before taxes but after payment of salaries and adjusted compensation to the three stockholder-

officers, of a total of $42,983.13, of which amount each of the Newells received $15,527.71 and George W. Yost received $11,927.71 in 1937.

12. On December 2, 1937, subscriptions were accepted for the issuance of additional stock as follows:

George W. Yost	12 shares	$ 600.00
Robert L. Newell	32 "	1,600.00
Richard B. Newell	32 "	1,600.00

which amounts were charged to their respective accounts and said stock issued, so that thereafter all the authorized stock of 1,000 shares were held: 510 shares by Yost and 245 shares by each of the Newells.

13. On December 27, 1937, there was declared a dividend of $20.00 per share, but not to exceed the net profits [5] for the year 1937, as a result of which Yost received $7,968.08 in dividends on his 510 shares, and each of the Newells received $3,827.81 on his respective 245 shares.

14. As of the end of 1937, Yost, on his original investment of $7,500.00 in the Tri-coach Corporation, had received from the corporation, in the two years 1936 and 1937, a total of $41,686.38 in salary and dividends, of which amount he paid back to the company $1,001.42 to cover his pro rata of the 1935 deficit and $18,000.00 for 360 additional shares of stock, which still left him with a net amount of $22,684.96, and he owned 510 fully paid up shares, or 51% of the stock of Tricoach Corporation.

15. As of November 1, 1937, the two Newells

and Yost formed a partnership under the name of Tricoach Sales Company, to carry on the general business activities appertaining to the wholesale and retail distribution of motor vehicles and trading in commercial paper relating to such transactions. The Newells each contributed $10,000.00 and Yost $20,000.00, Yost having a 50% interest and each of the Newells a 25% interest in the partnership. Robert L. Newell was to devote most of his time to the partnership as general manager in charge of all sales promotion activities of the firm and was to receive $200.00 a month, which was to be considered an expense of the business before ascertaining the net profits of the firm's business. Richard B. Newell was to have charge of all matters relating to engineering services and construction, specifications and purchase contracts. George W. Yost was to approve all transactions relating to extended time payment, the purchase and sale of commercial paper, the borrowing of funds, and other similar financial matters. For the two months in 1937 the firm's net profits were $526.00, of which amount Yost's share was $263.00.

16. In March, 1936, Heiser's, Inc., made an assignment for the benefit of creditors, and during said year all its machinery and equipment was sold to Pacific Car & Foundry Co., which installed said machinery and equipment in its Renton plant and started a bus-body manufacturing plant in competition with Tricoach Corporation, but such venture resulted in a considerable loss to the Pacific Car & Foundry Co. in each of the years 1936 and 1937.

17. For several months throughout 1938, Pacific Car & Foundry Co. negotiated with the Newells and Yost for the purpose of accomplishing a merger or consolidation or some other method to eliminate the competition of Tricoach Corporation and to secure the services of the two Newell brothers to manage the production and sales of the Motor Coach Division of Pacific Car & Foundry Co.

18. The arrangement finally worked out contemplated [6] the leasing by Tricoach Corporation of all its machinery and equipment to the Newells for ten years, together with an option to them to purchase, by December 31, 1938, at its depreciated book value, said machinery and equipment, and the Newells were to sublease to Pacific Car & Foundry Co. all of said Tricoach Corporation's machinery and equipment for 7½ years from October 1, 1938, and it was to be moved at Pacific's expense to its Renton plant. Pacific was to operate its Motor Coach Division for 7½ years from October 1, 1938, and to employ the Newells for said period at a minimum salary of $250.00 per month each and, in addition thereto, to pay each of the Newells 1/6 of the profits of the business of the Motor Coach Division earned during said term. Richard B. Newell was to have charge of and manage the production end and Robert L. Newell was to manage the balance of the business of the Motor Coach Division. Pacific was to purchase, as needed, for cash, at then market prices, all of Tricoach Corporation's materials inventory and Pacific was to

furnish free storage space therefor if said inventory was moved to its Renton plant. Tricoach was not to compete with the business of the Motor Coach Division in the Pacific Northwest during the life of the agreement.

19. As such proposed arrangement would mean liquidation of the affairs of Tricoach Corporation, whereby Yost would receive only approximately the par value of his Tricoach stock, he was unwilling to agree to such an arrangement unless he was to receive some additional payment or some share of the substantial profits it was contemplated would be made by the Motor Coach Division with the elimination of the competition of Tricoach Corporation.

20. According, to induce Yost to agree to the proposed arrangement, which necessitated the liquidation of Tricoach Corporation, each of the Newells agreed with Yost that if Yost would agree to the consummation of the proposed arrangement and would also loan each of them, without interest, $4,187.83 to be used by each of them to purchase from Tricoach its machinery and equipment, which the Newells were to sublease to Pacific, each of the Newells would pay to Yost an amount equivalent to one-third of the first $37,500.00 each of the Newells should receive out of their respective shares of one-sixth of the prospective profits of the Motor Coach Division, to be paid to Yost within three days after the Newells had received their settlement of said profits. One-half of all such payments was to be applied by Yost in payment of the $4,187.83 to

be loaned by Yost to each of the Newells until such loans were paid in full.

21. Such arrangement being satisfactory to Yost, at a joint meeting of the stockholders and directors of [7] Tricoach Corporation held August 2, 1938, a resolution was adopted to suspend the manufacturing operations of the corporation on or about October 1, 1938; to gradually liquidate its affairs; to enter into the proposed agreement with Pacific Car & Foundry Co.; and to enter into a lease-agreement with the Newells for lease of the corporation's manufacturing machinery and equipment, with an option whereby they might purchase such machinery and equipment on or before December 31, 1938, for each, at its depreciated book value.

22. Thereafter, on August 3, 1938, a four-party agreement was duly entered into between Pacific Car & Foundry Co. as first party, the two Newells as second parties, Tricoach Corporation as third party, and George W. Yost as fourth party, to carry out the proposed arrangement.

23. On said August 3, 1938, George W. Yost entered into two separate, identical contracts, one being with Richard B. Newell and the other being with Robert L. Newell, to evidence their respective agreements with Yost in regard to payment to Yost of a share of the respective profits to be received by each of the Newells out of the Motor Coach Division business.

24. In 1940, each of the Newells paid to Yost,

under this last-mentioned agreement, $2,603.65, and of this $5.207.30 so received from the two Newells, $2,603.65 was applied toward payment of their respective loans, and the other half, or $2,603.65, was treated as a capital gain of the community composed of Mr. and Mrs. Yost.

25. In June 1940, George W. Yost received from the Tricoach Corporation a liquidating dividend of $25,500.00 in complete liquidation and redemption of his 510 shares of stock of the corporation, which stock had cost him $26,501.42, resulting in a community capital loss of $1,001.42.

26. In 1941, each of the Newells paid to Yost, under the above-mentioned agreement, $9,286.00, and of this $18,572.00 so received from the two Newells, $5,772.01 was applied toward payment of the balance of their respective loans and the remainder, $12,799.99, was treated as a capital gain of the community composed of Mr. and Mrs. Yost.

27. In 1942, Yost received an additional amount of $1,220.68 from the two Newells, which amount was treated as a capital gain of the community composed of Mr. and Mrs. Yost. This made the total received by him from the two Newells of $24,999.98, of which amount $8,375.66 was applied in repayment of their loans to him and the balance of $16,-624.32 was treated as a capital gain of the community composed of Mr. and Mrs. Yost in the respective years in which it was received. [8]

28. In petitioner's 1940 Income Tax Return there was reported as a long-term capital gain

$1,301.82, being his community one-half of the $2,-603.65 received from the two Newells in 1940 after the above-mentioned application on their indebtedness, upon the theory of its being an additional payment to him by them for his community interest in Tricoach Corporation for discontinuance of its business and its liquidation, and as such long-term capital gain there was taken into account, for tax purposes, only 50% thereof, or $650.91.

29. Respondent in his Deficiency Letter held that said amount of $1,301.82, received by petitioner in 1940, was not a capital gain but was ordinary income taxable in full, thereby increasing petitioner's taxable income for 1940 by $650.91.

30. That if said amount of $1,301.82 was correctly reported as a long-term capital gain and only 50% thereof was to be taken into account for income tax purposes, then, due to certain other adjustments made by respondent in his Deficiency Letter, and to which no exception is taken, the correct deficiency for 1940 would be only $2.57.

31. In petitioner's 1941 income tax return there was reported as a long-term capital gain $6,400.00, being his community one-half of the $12,800.00 received from the two Newells in 1941 after the above-mentioned application on the balance of their indebtedness, upon the theory of its being an additional payment to him by them for his community interest in Tricoach Corporation for discontinuance of its business and liquidation, and as such long-

term capital gain there was taken into account, for tax purposes, only 50% thereof, or $3,200.00.

32. Respondent in his Deficiency Letter held that said amount of $6,400.00 was not a capital gain, but was ordinary income taxable in full, thereby increasing petitioner's taxable income for 1941 by $3,200.00.

33. That if said amount of $6,400.00 was correctly reported as a long-term capital gain and only 50% thereof, or $3,200.00, was to be taken into account for income tax purposes, then there would be no deficiency for 1941.

Wherefore, petitioner prays that this Court may hear the proceeding and determine that the deficiency due from [9] petitioner for 1940 is not in excess of $2.57, and that there is no deficiency for 1941.

ALFRED J. SCHWEPPE
MAURICE R. McMICKEN
Counsel for Petitioner.

State of Washington,
County of King—ss.

George W. Yost, being first duly sworn, says: That he is the petitioner above named; that he has read the foregoing Petition and is familiar with

the statements contained therein, and that the statements contained therein are true.

GEORGE W. YOST

Subscribed and sworn to before me this 13th day of May, 1944.

[Seal] JANE CARMODY

Notary Public in and for the State of Washington, residing at Seattle. [10]

EXHIBIT "A"

SN-IT-1

Treasury Department
Internal Revenue Service
Seattle 4, Washington

March 23, 1944

Office of
Internal Revenue Agent in Charge
Seattle Division
350 Federal Office Building

IT:90D:IG

Mr. Geo. W. Yost
Edmonds, Washington

Dear Mr. Yost:

You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1940 and December 31, 1941, discloses a deficiency of $1,147.14 as shown in the statement attached.

In accordance with the provisions of existing

internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day), from the date of the mailing of this letter, you may file a petition with Tax Court of The United States for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Internal Revenue Agent in Charge, Seattle 4, Washington for the attention of IT:90D:IG

The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

JOSEPH D. NUNAN, Jr.,
Commissioner,

By (signed) S. R. STOCKTON
Internal Revenue Agent in
Charge

Enclosures:
Statement.
Form of waiver.
IG:EGG [11]

Statement

Mr. Geo. W. Yost, Edmonds, Washington

Tax Liability for the Taxable Years Ended December 31, 1940 and December 31, 1941

Income Tax

	Liability	Assessed	Deficiency
1940	$ 565.77	$ 490.33	$ 75.44
1941	3,271.66	2,199.96	1,071.70
Total	$3,837.43	$2,690.29	$1,147.14

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated April 7, 1943; to your protest dated September 25, 1943; and to the statements made at the conferences held on October 14, 1943, November 24, 1943 and March 13, 1944.

Amounts received from Robert L. and Richard B. Newell in 1940 and 1941 are held to be ordinary income as distinguished from capital gain for the reasons that (a) the amounts were not received from the sale or exchange of a capital asset as defined by Section 117 of the Internal Revenue Code and (b) the amounts were not distributed by a corporation in complete cancellation or redemption of all of its stock in accordance with a plan of liquidation under which the transfer of its property was to be completed within a time specified in the plan, not exceeding three years. Section 115(c), Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Maurice R. Mc-

Micken, 657 Colman Building, Seattle, 4, Washington, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1940

Adjustments to Net Income

Net income as disclosed by return		$8,961.21
Unallowable deductions and additional income:		
(a) Amounts received from Robert L. and Richard B. Newell	$650.91	
(b) Dividends	46.73	
(c) Contributions and taxes	110.59	808.23
Net income adjusted		$9,769.44

Explanation of Adjustments

(a) There was included as a capital gain on your return your community one-half of the amounts received by you and your wife from Robert L. and Richard B. Newell. Since it is held that the amounts received are ordinary income, adjustment is made accordingly as shown by the following computation:

	Total Community	One-half
Amounts received and held to be ordinary income	$2,603.65	$1,301.82
Taken into account on your return (50%)	1,301.83	650.91
Adjustment	$1,301.82	$ 650.91

(b) It has been determined that the distributions of $984.00 you received from the A. M. Yost Estate, Inc., represented taxable dividends to the extent of $622.64. You reported taxable dividends

from the source in the amount of $575.91. There is accordingly added to income the amount of $46.73, the difference between $622.64 and $575.91.

(c) One-half of the deductions for contributions and taxes paid with community funds in the amount of $110.59 is disallowed since such one-half is allowable as a deduction in computing the taxable net income of your wife.

Computation of Tax

Net income adjusted		$9,769.44
Less: Personal exemptions	$911.32	
Credit for dependents	800.00	1,711.32
Balance (surtax net income)		$8,058.12
Less: Interest on Government obligations	15.75	
Earned income credit	300.00	315.75
Balance subject to normal tax		$7,742.37
Normal tax at 4% on $7,742.37		309.69
Surtax on $8,058.12		204.65
Total normal tax and surtax		$ 514.34
Defense tax (10% of $514.34)		51.43
Total income tax liability		$ 565.77
Income tax assessed:		
Original, Account No. 200679		490.33
Deficiency of income tax		$ 75.44

Taxable Year Ended December 31, 1941

Adjustments to Net Income

Net income as disclosed by return	$13,240.73
Unallowable deductions and additional income:	
(a) Amounts received from Robert L. and Richard B. Newell	3,200.00
Net income adjusted	$16,440.73

Explanation of Adjustments

(a) Amounts received from Robert L. and Richard B. Newell are held to be ordinary income as previously explained:

	Total Community	One-half
Amounts received	$12,800.00	$6,400.00
Taken into account on return (50%)	6,400.00	3,200.00
Adjustment	$ 6,400.00	$3,200.00

Computation of Tax

Net income adjusted		$16,440.73
Less: Personal exemption	$730.74	
Credit for dependents	800.00	1,530.74
Balance (surtax net income)		$14,909.99
Less: Interest on Government obligations	15.75	
Earned income credit	382.63	398.38
Balance subject to normal tax		$14,511.61
Normal tax at 4% on $14,511.61		580.46
Surtax on $14,909.99		2,691.20
Total net income tax liability		$ 3,271.66
Income tax assessed:		
Original, Account No. 306793		2,199.96
Deficiency of income tax		$ 1,071.70

[Endorsed]: T.C.U.S. Filed May 17, 1944. [14]

[Title of Tax Court and Cause.]

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges and denies as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits that the taxes in controversy are income taxes for the calendar years 1940 and 1941 in the respective amounts of $75.44 and $1,071.70. Denies the remaining allegations contained in paragraph III of the petition.

IV (1), (2), (3) and (4). Denies that in determining the deficiencies asserted respondent committed any errors and specifically denies that he committed errors as alleged in subparagraphs (1) to (4), inclusive, of paragraph IV of the petition.

V (1). For lack of information on which to base an opinion as to the truth or falsity of the allegations contained in subparagraph [15] (1) of paragraph V of the petition, the same are denied.

(2). Admits that Tricoach Corporation was organized on or about January 28, 1935, by George W. Yost, Robert L. Newell, and Richard B. Newell,

who became the owners of the corporation's capital stock and also its officers and directors. For lack of information denies the remaining allegations contained in subparagraph (2) of paragraph V of the petition.

(3) to (14), inclusive. For lack of information denies each and every material allegation contained in subparagraphs (3) to (14), inclusive, of paragraph V of the petition.

(15). Admits that in the year 1937 George W. Yost and the two Newells organized a partnership under the name of Tricoach Sales Company. For lack of information denies the remaining allegations contained in subparagraph (15) of paragraph V of the petition.

(16). For lack of information denies the allegations contained in subparagraph (16) of paragraph V of the petition.

(17) and (18). Admits that in the year 1938 negotiations were conducted between Pacific Car & Foundry Co. on the one hand and the Newells and George W. Yost on the other, which resulted in certain agreements which were subsequently executed. Denies the remaining allegations contained in subparagraphs (17) and (18) of paragraph V of the petition.

(19). For lack of information denies the allegations contained in subparagraph (19) of paragraph V of the petition.

(20). Admits that an agreement was also negotiated between [16] George W. Yost and the Newells which contemplated, among other things, that certain advances would be made by Yost to the Newell brothers. Denies each and every other material allegation contained in subparagraph (20) of paragraph V of the petition.

(21). Denies the allegations contained in subparagraph (21) of paragraph V of the petition.

(22). Admits that on or about August 3, 1938, a four-party agreement was entered into among Pacific Car & Foundry Co. as first party, the two Newells as second parties, Tricoach Corporation as third party, and George W. Yost as fourth party.

(23) and (24). Admits the allegations contained in subparagraphs (23) and (24) of paragraph V of the petition.

(25). Admits that in the year 1940 George W. Yost received from the Tricoach Corporation the sum of $25,500.00 on shares of capital stock held by him which had a cost basis of $26,501.42 on which a community capital loss was claimed in the sum of $1,001.42. Alleges that in determining the deficiency asserted herein respondent has allowed as a community deduction to petitioner and his wife one-half of the aforesaid capital loss, of $500.71, or $250.35 to each.

(26). Admits the allegations contained in subparagraph (26) of paragraph V of the petition.

(27). Denies each and every material allegation contained in subparagraph (27) of paragraph V of the petition.

(28). Admits that in petitioner's 1940 income tax return there was reported as a long-term capital gain $1,301.82, being his community [17] one-half of the $2,603.65 received from the two Newells in 1940, after the application on indebtedness referred to in subparagraph (24) of paragraph V above, of which there was taken into account for tax purposes only 50 per cent thereof, or $650.91. Denies the remaining allegations contained in subparagraph (28) of paragraph V of the petition.

(29). Admits the allegations contained in subparagraph (29) of paragraph V of the petition.

(30). Denies the allegations contained in subparagraph (30) of paragraph V of the petition.

(31). Admits that in petitioner's 1941 income tax return there was reported as a long-term capital gain $6,400.00, being his community one-half of the $12,800.00 received from the two Newells in 1941, after the application on indebtedness referred to in subparagraph (26) of paragraph V above, of which there was taken into account for tax purposes only 50 per cent thereof, or $3,200.00. Denies the remaining allegations contained in subparagraph (31) of paragraph V of the petition.

(32) and (33). Admits the allegations contained in subparagraphs (32) and (33) of paragraph V of the petititon.

VI. Denies generally and specifically each and every other material allegation contained in the petition, not hereinbefore specifically admitted, qualified, or denied. [18]

Wherefore, it is prayed that the petitioner's appeal be denied, and that the Commissioner's determination of deficiencies be approved.

(Signed) J. P. WENCHEL WHP
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel,

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

WHP:wmm 6-9-44

[Endorsed]: T.C.U.S. Filed June 20, 1944. [19]

The Tax Court of The United States

5 T. C. No. 16

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

JUANITA YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Nos. 4969, 4970. Promulgated May 28, 1945.

Amounts received by petitioner, under contracts entered into between him and two men who had previously been associated with him and a corporation in which all were interested, which represented a portion of the profits derived by the two men in a new business, held under the contracts, to be ordinary income to petitioner and not to have been derived from the sale or exchange of capital assets.

Alfred J. Schweppe, Esq., and Maurice R. McMicken, Esq., for the petitioners.

W. H. Payne, Esq., for the respondent.

OPINION

Mellott, Judge: Each of these consolidated cases involves deficiencies in income tax for the calendar years 1940 and 1941 in the amounts of $75.44 and $1,071.70. The basic facts have been stipulated and are hereby found. They will be summarized. Additional findings based upon testimony adduced at the trial will be made; but they will be specifically so designated. Inasmuch as the petitioner in Docket No. 4970 is the wife of George W. Yost and filed a separate [20] return of income, identical to that filed by him, and since the questions involved in the two cases are the same, George W. Yost will hereinafter be referred to as the petitioner.

The issue in each case is whether amounts received during the taxable years, under agreements theretofore entered into between petitioner and Richard B. and Robert L. Newell, were capital gains or ordinary income.

For some time prior to the taxable years petitioner had been engaged in the bus passenger transportation business in suburban Seattle as part owner and general manager of Suburban Transportation System. Richard B. Newell and Robert L. Newell (sometimes herein referred to by first name and sometimes as the Newells) had, for some time prior to January 28, 1935, discussed with petitioner the formation of a new corporation to manufacture bus and truck bodies. Richard had been employed for a number of years as draftsman and chief engi-

neer for Heiser's Inc., a manufacturer of bus and truck bodies at Seattle, and Robert had been engaged in the sale throughout the Pacific Northwest of bus and truck bodies manufactured by Wentworth & Irwin of Portland, Oregon.

As a result of the discussion petitioner and the two Newells, on January 28, 1935, organized the Tricoach Corporation (hereinafter called Tricoach), a Washington corporation with its principal office at Seattle. Thereafter and at all times herein mentined the three owned all of the outstanding stock of the corporation and were its only officers and directors.

Tricoach had an authorized capital of $50,000 composed of 1,000 shares of common stock of the par value of $50 each. Yost subscribed for 150 shares and each of the Newells subscribed for five shares, Yost paying $7,500 and each of the Newells $250. Robert was elected president and sales manager, Richard vice-president and chief engineer, and petitioner secretary, which offices they continued to hold during the entire operation of the company. [21]

The salary of the two Newells was originally fixed at $250 per month; but in addition thereto they and petitioner were each to receive adjusted compensation, at the end of each calendar[1] year, equivalent to one third of the amount of the net

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[1]The stipulation states at the end of each calendar year. The resolution states at the end of each fiscal year. The disparity appears to be immaterial.

profits for the year which should be in excess of an amount necessary to pay eight percent dividends on the outstanding stock.

The result of the operation of Tricoach for 1935, after the payment of the salaries to the Newells and other expenses, was a deficit of $1,068.18. The deficit was wiped out by the 1936 operations and in December of that year a dividend of $80 per share, "but not to exceed the net profits for the year," was declared. Petitioner received a dividend of $11,649.64 and each of the Newells received $388.32.

On December 16, 1936, 764 additional shares of stock were issued at par, 348 shares to petitioner and 208 shares to each of the Newells. On December 31, 1936 (924 shares were outstanding, the total paid in capital being $46,200.

The monthly compensation of the Newells was increased to $300 per month during 1936 and they were paid on such basis for six months of that year. Each therefore received during 1936 $3,300 as salary. The net income of the corporation for that year was substantial and petitioner and each of the Newells received, during the year, "adjusted compensation" of $10,140.95, or a total of $30,422.95.

On December 2, 1937, the remaining 76 shares of the 1,000 authorized by the charter of Tricoach were isued at par, 12 to petitioner and 32 to each of the Newells. The profit of Tricoach was substantial for the year 1937. On December 27, 1937, a dividend of $20 per share, "but not to exceed the

net [22] profits for the year 1937," was declared, as a result of which petitioner received $7,968.08 on his 510 shares and each of the Newells received $3,827.81 on his 245 shares. Petitioner and each of the Newells also received, as "adjusted compensation" for that year, $11,927.71, and aggregate of $35,783.13.

The "adjusted compensation" referred to in the preceding paragraphs was in addition to the cash dividends received during 1936 and 1937. Petitioner, on his original investment of $7,500 in Tricoach, had therefore received during the two years, the aggregate amount of $41,686.38, $19,001.42 of which had been invested by him subsequently in its stock and in making up his portion of the 1935 deficit. At that time he owned 510 of its fully paid-up shares, or 51 percent of its stock.

As of November 1, 1937, petitioner and the Newells formed a partnership under the name of Tricoach Sales Co. (hereinafter referred to as Sales Co.) to carry on the general business activities appertaining to the wholesale and retail distribution of motor vehicles and trading in commercial paper relating to such transactions. Petitioner contributed $20,000 and each of the Newells $10,000, petitioner having a 50 percent interest and Richard and Robert each a 25 percent interest. Robert was to devote most of his time to the partnership as general manager in charge of sales promotion, for which he was to receive a salary of $200 per month. Richard was to have charge of

all matters relating to engineering services and construction, specifications and purchase contracts and petitioner was to have charge of transactions relating to purchase and sale of commercial paper, borrowing of funds and similar financial matters. For the 2 months in 1937 the firm's net profits were $526, petitioner's share being $263. [23]

In March 1936 Heiser's, Inc. (the former employer of Richard) made an assignment for the benefit of creditors and during 1936 all of its machinery and equipment was sold to Pacific Car & Foundry Co. (hereinafter called Pacific). The machinery and equipment was installed in Pacific's Renton plant and a bus-body manufacturing plant was started in competition with Tricoach. The venture resulted in considerable loss to Pacific in each of the years 1936 and 1937.

For several months throughout 1938 Pacific negotiated with the Newells and petitioner for the purpose of accomplishing a merger or consolidation or working out some method to eliminate the competition of Tricoach and to secure the services of the two Newells to manage the production and sales of the motor coach division of Pacific. The arrangement finally worked out contemplated leasing by Tricoach of its machinery and equipment to the Newells for 10 years, together with an option to them to purchase it by December 31, 1938, at its depreciated book value. The Newells were to sublease to Pacific all of the Tricoach machinery and equipment for 7½ years from October 1, 1938,

and it was to be moved, at Pacific's expense, to its Renton Plant. Pacific was to operate its motor coach division for 7½ years from October 1, 1938, to employ the Newells for said period at a minimum salary of $250 per month each, and, in addition thereto, to pay each of the Newells one-sixth of the profits of the business of the motor coach division earned during said term. Richard was to have charge of the production end and Robert was to manage the balance of the business. Pacific was to purchase, as needed, for cash at then market prices, all of Tricoach's materials inventory and to furnish free storage space if the inventory should be moved to its plant. A copy of the agreement is attached to the stipulation as Exhibit 7. Further reference to this document will be made and it will sometimes be referred to as the four-party agreement. [24]

At the same time that the four-party agreement was executed petitioner and the Newells entered into further agreements, which contemplated an arrangement whereby petitioner would lend to each of the Newells, without interest, $4,187.83, to be used to purchase the machinery and equipment of Tricoach, which the Newells were to sublease to Pacific.

Separate agreements were executed by each of the Newells and petitioner, petitioner being designated in each as the second party. Each agreement recited inter alia:

In Consideration that the second party shall con-

sent to and enter into a certain contract between [Pacific, Tricoach et al, Exhibit 7 referred to above] * * * and shall, on or before December 31, 1938, advance to first party the sum of Forty-one Hundred Eighty - seven 83/100 ($4,187.83) Dollars, without interest, to be used by first party for the purpose of acquiring joint ownership of the machinery and equipment to be sub-leased * * * [to Pacific], the first party hereby agrees to pay unto second party an amount equivalent to: one-third (1/3) of all compensation, or damages in lieu thereof, not in excess of Thirty-seven Thousand Five Hundred Dollars ($37,500.00), said first party shall receive or be entitled to receive from [Pacific] by reason of said contract as set forth in Exhibit "A" attached, [Exhibit 7] exclusive of the minimum salary of $250.00 per month and rental income separately set forth in said contract. Payments to be made within three (3) days after first party shall receive an accounting and settlement of his adjusted bonus compensation from the Pacific Car and Foundry Co. for each respective calendar year or fractional period.

Each agreement further provided that, in the event any part or all of the machinery and equipment should be sold by the Newells, one-fourth of the net proceeds derived from the sale should be paid to petitioner and applied in liquidation of the $4,187.83 loan and that one-half of all other payments made pursuant to the agreement would be applied in liquidation of the loan until it should

be paid in full. In the event that the first party [Richard in one contract and Robert in the other] should terminate his employment with Pacific [25] either voluntarily or by reason of death, the unpaid balance of the loan was to become immediately due and payable; however, first party, his heirs, assigns, or legal representatives was given the option of assigning to petitioner an undivided one-fourth interest in the machinery and equipment, together with the proportionate share of rental income to be subsequently earned, in full satisfaction of the unpaid balance, if any, then due on the loan. In the event that the named Newell should continue in the employ of Pacific for the full 7½ years, then petitioner agreed "to waive, cancel, and forgive any unpaid balance of the aforesaid loan in the amount of $4,187.83." All of the contracts referred to above were dated August 3, 1938.

At a joint meeting of the stockholders and directors of Tricoach held on August 2, 1938, a resolution was adopted to suspend the manufacturing operations of the corporation on or about October 1, 1938; to gradually liquidate its affairs, to enter into the proposed agreement with Pacific (Exhibit 7) and to enter into a lease agreement with the Newells for lease of the corporation's manufacturing machinery and equipment with an option whereby they might purchase such machinery and equipment on or before December 31, 1938, for cash at its depreciated book value. (The option was exercised.)

The minutes of the meeting referred to above recite:

After lengthy discussion the following resolution was introduced and unanimously adopted:

Whereas; the headquarters building of the Tricoach corporation, at 705 Sixth Avenue North, Seattle, Washington, has been inadequate to properly house the corporation's manufacturing activities, it being necessary to rent additional space in other buildings in order to relieve the overcrowded conditions; insufficient space in which to place tools and equipment, work under construction, and for employees to perform their respective duties, has caused general inefficiency in direct labor production and an unwarranted increase in overhead expenses in ratio to productive man hours; making continued occupancy of the present quarters unprofitable; and [26]

Whereas; the present general business conditions, labor unrest, excessive taxation, governmental regulation and interference with manufacturing operations, etc., discourage the reestablishment of operations in another location; and

Whereas; Robert L. Newell, and Richard B Newell, who have heretofore been in active management of the corporation's affairs, have an opportunity to enter the employ of the Pacific Car and Foundry Co., Motor Coach Division, and receive greater compensation than can be expected from continued operation of the Tricoach Corpor-

ation; and have arranged with their prospective employer to use all manufacturing machinery and equipment on a rental basis and to bear all cost of removing same from its present location, and to purchase whatever materials and supplies as may be on hand October 1, 1938, at current market prices when required, so that no unusual expenses or losses may be incurred by Tricoach Corporation by reason of suspending operations;

Now Therefore Be It Resolved; [substance shown above].

The concluding paragraph of the minutes is as follows:

Upon motion duly made and seconded, an agreement dated August 2, 1938, signed by all the stockholders of Tricoach Corporation, restricting the sale and transfer of shares of capital stock to persons other than the present stockholders and members of their respective families, was received and ordered filed as an appendix to these minutes.

In 1940 there was paid to petitioner by the Newells, under their respective agreements, the following amounts which were applied by petitioner as follows:

	From Robert L. Newell	From Richard B. Newell	Total
Payments received	$2,603.65	$2,603.65	$5,207.30
Applied toward payment of their loans	1,301.83	1,301.82	2,603.65
Treated as a community capital gain	$1,301.82	$1,301.83	$2,603.65

On June 26, 1940, petitioned received $25,500 and the two Newells each received $12,250 from Tricoach as liquidating dividends. Each of the parties duly acknowledged receipt of the foregoing sums and directed that they be paid over to the Sales Co. and be charged to their respective accounts. That was done. Receipt was signed by petitioner reading as follows:

Received of Tricoach Corporation, the sum of $25,500.00 Twenty-five thousand five hundred dollars; same being an amount equivalent to the par value of all the capital stock in said corporation owned by the undersigned. In event the Tricoach Corporation shall resume its business activities the undersigned hereby agrees to return the funds thus advanced; but, if business activities are not resumed, the funds thus advanced shall, upon dissolution, be applied in settlement of any liquidating dividends that may be declared.

The stock had cost petitoner $25,500 plus $1,001.42, his pro rata share of the 1935 deficit, and it therefore had a basis in his hands of $26,501.42. Respondent, in determining the deficiencies, has allowed as a community deduction 50 percent of the long-term capital loss of $1,001.42 and this item is not in controversy.

In 1941 there was paid to petitioner by the Newells, under their respective agreements, the following amounts, which were applied by petitioner as shown:

	Robert L. Newell	Richard B. Newell	Total
Payment received	$9,286.00	$9,286.00	$18,572.00
Applied toward payment of balance of loans	2,886.00	2,886.01	5,772.01
Treated as community capital gain	$6,400.00	$6,399.99	$12,799.99

In 1942 petitioner received final payments of $610.34 from each of the Newells, the total received from both of them being, as shown by the schedules above, $24,999.98. [28]

In each petitioner's 1940 income tax return there was reported as a long-term capital gain $1,301.82, being his community one-half of the $2,601.55 received from the two Newells in 1940 after the above-mentioned application on their indebtedness, and as such long-term capital gain there was taken into account, for tax purposes, only 50 percent thereof, or $650.91.

Respondent, in each of his deficiency letters, held that said amount of $1,301.83, received by each petitioner in 1940, was not a capital gain but was ordinary income taxable in full, thereby increasing each petitioner's taxable income for 1940 by $650.91. If the amount was correctly reported by the petitioners then (because of uncontested adjustments made by respondent) the correct deficiency of each petitioner for 1940 would be $2.57.

In each petitioner's 1941 income tax return there was reported as a long term capital gain $6,400, being his community one-half of the $12,800 received from the two Newells in 1941 after the above-mentioned application on the balance of their in-

debtedness, and as such long-term capital gain there was taken into account, for tax purposes, only 50 percent thereof, or $3,200. Respondent held that said amount of $6,400 was not a capital gain, but was ordinary income taxable in full, thereby increasing petitioner's taxable income for 1941 by $3,200. If said amount was correctly reported as a long-term capital gain and only 50 percent thereof, or $3,200, is to be taken into account for income tax purposes, then there would be no deficiency for 1941.

Based upon oral evidence adduced at the trial and admissions of the parties it is also found that Tricoach has never been dissolved; that petitioner received $25,500 and nothing more from it upon its liquidation; that although it had no assets subsequent to the liquidation it was kept alive so that it could be availed of in the event the stockholders should desire to use it; that the [29] stockholders had in mind they might get back into the same business and conduct the corporation as they had formerly done although the possibility they might do so was considered remote; that in order to get the agreements with the Newells, under which the payments in issue were received it was necessary for petitioner to enter into the four-party agreement (Exhibit 7) and to advance, to Robert and Richard each, the sum of $4,187.83 without interest; that the amounts were to be returned, if at all, out of compensation or damages in lieu thereof received by the Newells from Pacific; and that petitioner would not have entered into the four-party agreement

unless arrangements had been made under which he was to receive additional payments from the Newells.

Petitioner contends that the amounts received from the Newells over and above the repayment of their loans ($2,603.65 in 1940 and $12,800 in 1941) constituted long term capital gains to the community. His argument proceeds substantially as follows: The shares of Tricoach stock were capital assets. Tricoach was a successful corporation, as is indicated by it earnings. All that was distributed to the stockholders upon its liquidation was the par value of the stock, its earnings having previously been distributed as dividends and adjusted compensation. The dividends in complete liquidation are to be treated as a payment in exchange for the stock under section 115 (c) I. R. C. But the stock had a value in excess of par. Petitioner would not have consented to the corporation going out of business except for the consideration to be paid to him by the Newells. The payments by the Newells were therefore additional consideration to him for his consent to the liquidation and are to be added to the amounts received from the corporation as a liquidating dividend. [30]

The argument is ingenious but unsound. The statute relied upon states that amounts distributed in complete liquidation of a corporation "shall be treated as in full payment in exchange for the stock." It is doubtful if we are at liberty to construe it, as petitioner obviously wishes it to be construed, as meaning in part payment for the

stock. But passing this question we examine in more detail the arguments of the respective parties upon brief.

Petitioner cites but two cases: David A. DeLong, 43 B.T.A. 1185, and Margery K. Megargel, 3 T. C. 238. In the DeLong case a majority stockholder in a corporation, being desirous of effectuating a reorganization, paid cash to a minority stockholder to induce him to part with this stock and participate in the reorganization. He did so. It was held that the "crux of the business" was that the minority stockholder had disposed of his stock in the old company and received in exchange shares of stock in the new and $14,000 in cash; that the total consideration should be treated as the sales price of the stock and the excess over cost as capital gain; that the portion of the gain attributable to the stock received was subject to the nonrecognition provisions of the statute and not subject to tax; and that only the portion attributable to the cash was then taxable. In the Megargel case the taxpayer had transferred stock, in 1933, upon representations which she later considered had been made fraudulently. In 1939 she instituted an action to annul the transaction and to recover the stock. The action was compromised, the taxpayer receiving cash, dismissing her action and executing a general release. It was held that inasmuch as the action had been primarily for the recovery of capital assets, the cash received in settlement partook of the nature of a capital recovery and the gain was taxable as a capital gain. [31]

The cited cases, in our judgment, furnish but slight aid to petitioner. He did not sell or dispose of his stock but still has it. The amount received in the liquidation has been treated as the statute contemplates. Passing the seeming inconsistency implicit in his failure to contest the allowance of a capital loss in connection with the liquidation of the corporation and thereby being in the position of claiming both a gain and a loss upon what he insists was an "exchange" of his stock, we examine in more detail his contention that the two types of payments—the liquidating distributions and the amounts received from the Newells—are to be added together for the purpose of computing his capital gain.

In his returns for the taxable years petitioner treated the amounts received from the Newells as "Tricoach Goodwill." We do not understand that he is now contending that the characterization is proper. It is therefore probably unnecessary to point out that good will "cannot be carved out of a business and sold independently of the going concern * * *." Dodge Bros. v. United States, 118 Fed. (2d) 95. Cf. Metropolitan Bank v. St. Louis Dispatch Co., 149 U. S. 436. It is also difficult to see how a corporation, stripped of all of its assets and obligated by a valid contract to refrain for a period of 7½ years from engaging in the business for which it had been organized and equipped, had any good will of value, especially since its stockholders were bound by the same agreement and could not dispose of their stock in the corporation

except to the other stockholders or members of their respective families. Assuming that any good will existed, it was never transferred to, or disposed of by, petitioner.

Returning to petitioner's argument upon brief, he insists that he would not have consented to the corporation going out of business and liquidating unless he had been paid a substantial sum over and above the par value of his stock. He [32] so testified at the hearing and we have no reason to believe he was not telling the truth. But that does not prove that the amounts received from the Newells in the later years were received from the sale or exchange of his stock, even if it be assumed, contrary to the fact, that his stock had been disposed of. The form in which the parties chose to mold the transaction is clearly indicated by the documents which they signed. They are the best evidence of what they intended to do and of what they did. In consideration of petitioner consenting to the four-party contract, thereby effectively binding the corporation in which he owned the controlling interest and himself not to "own, operate, lease, conduct or have any interest in any automobile, bus or coach manufacturing or selling business in the States of Washington, Oregon, Idaho or Montana during the life of [the] agreement [7½ years] * * * [and not] work for, aid or assist any person, firm, corporation or organization engaging in any such business * * * in competition * * *," and in consideration of petitioner advancing to each of the Newells $4,187.83, they agreed to share the profits

which should be received from the Motor Coach Division of Pacific. The amounts in issue represented his share in the profits.

In our opinion respondent is correct in designating the payments made by the Newells to petitioner as the fruits of a joint venture. His suggestion that a portion may have been received from an agreement not to compete in business may be passed. In any event we think it is clear that they were not received "from the sale or exchange of a capital asset." The Commissioner therefore committed no error in including the amounts in the community income.

Decision will be entered in each case for the respondent. [33]

The Tax Court of the United States
Washington

Docket No. 4969

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, Promulgated May 28, 1945, it is Ordered and Decided: That there are deficiencies in income tax for the calendar year

except to the other stockholders or members of their respective families. Assuming that any good will existed, it was never transferred to, or disposed of by, petitioner.

Returning to petitioner's argument upon brief, he insists that he would not have consented to the corporation going out of business and liquidating unless he had been paid a substantial sum over and above the par value of his stock. He [32] so testified at the hearing and we have no reason to believe he was not telling the truth. But that does not prove that the amounts received from the Newells in the later years were received from the sale or exchange of his stock, even if it be assumed, contrary to the fact, that his stock had been disposed of. The form in which the parties chose to mold the transaction is clearly indicated by the documents which they signed. They are the best evidence of what they intended to do and of what they did. In consideration of petitioner consenting to the four-party contract, thereby effectively binding the corporation in which he owned the controlling interest and himself not to "own, operate, lease, conduct or have any interest in any automobile, bus or coach manufacturing or selling business in the States of Washington, Oregon, Idaho or Montana during the life of [the] agreement [7½ years] * * * [and not] work for, aid or assist any person, firm, corporation or organization engaging in any such business * * * in competition * * *," and in consideration of petitioner advancing to each of the Newells $4,187.83, they agreed to share the profits

which should be received from the Motor Coach Division of Pacific. The amounts in issue represented his share in the profits.

In our opinion respondent is correct in designating the payments made by the Newells to petitioner as the fruits of a joint venture. His suggestion that a portion may have been received from an agreement not to compete in business may be passed. In any event we think it is clear that they were not received "from the sale or exchange of a capital asset." The Commissioner therefore committed no error in including the amounts in the community income.

Decision will be entered in each case for the respondent. [33]

The Tax Court of the United States
Washington

Docket No. 4969

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, Promulgated May 28, 1945, it is Ordered and Decided: That there are deficiencies in income tax for the calendar year

1940 and 1941 in the respective amounts of $75.44 and $1,071.70.

[Seal] Entered May 28, 1945.

(Signed) ARTHUR J. MELLOTT,
Judge. [34]

[Title of Tax Court and Causes Nos. 4969, 4970.]

STIPULATION FOR CONSOLIDATION AND STIPULATION OF FACTS

The above parties, by their respective counsel, hereby stipulate that the above-entitled proceedings may be consolidated for hearing and decision, and they hereby stipulate the following facts in said consolidated proceeding, each party reserving the right to introduce additional testimony and evidence at the hearing.

1. George W. Yost and Juanita Yost are husband and wife, residing at Edmonds, Washington, and their separate income tax returns for the years involved, namely, for the [35] calendar years 1940 and 1941, were timely filed with the Collector of Internal Revenue for the District of Washington, at Tacoma, Washington. Their returns for each of said years, or a true copy thereof, will be introduced in evidence at the hearing of this proceeding.

2. The notice of deficiency to each petitioner, copy of which is attached to the respective petitions, was mailed to each petitioner on March 23, 1944,

and their respective petitions were filed herein on May 17, 1944.

3. The taxes in controversy are income taxes for the calendar years 1940 and 1941 and the deficiencies asserted are:

	1940	1941	Total
George W. Yost	75.44	1071.70	1147.14
Juanita Yost	75.44	1071.70	1147.14
	150.88	2143.40	2294.28

In their petitions, the petitioners contend that the correct deficiencies are:

	1940	1941	Total
George W. Yost	2.57	None	2.57
Juanita Yost	2.57	None	2.57
	5.14	None	5.14

4. For a number of years prior to January 28, 1935, Richard B. Newell was draftsman and chief engineer for [36] Heiser's Inc., manufacturers of bus and truck bodies at Seattle, Washington, Robert L. Newell had been engaged in the sale throughout the Pacific Northwest of bus and truck bodies manufactured by Wentworth & Irwin, of Portland, Oregon; and George W. Yost had been, and still is, engaged in the bus passenger transportation business in suburban Seattle as part owner and general manager of Suburban Transportation System.

5. For some time prior to January 28, 1935, the two Newells had discussed with Yost the formation of a new corporation to manufacture bus and truck bodies. As a result thereof the three of them, as incorporators, on January 28, 1935, organized for that purpose Tricoach Corporation, a Washington

corporation, with its principal office at Seattle, and thereafter and at all times herein mentioned the three of them owned all of the outstanding stock of the corporation and they were the only officers and directors of the corporation. A copy of the articles of incorporation is hereto attached, marked Exhibit "1," and made a part hereof.

6. Tricoach Corporation had an authorized capital of $50,000.00, composed of 1,000 shares of common stock of the par value of $50.00 each. In the articles of incorporation Yost subscribed for 150 shares and each of the Newells subscribed for 5 shares, which subscriptions were paid in cash at the first meeting of the incorporators, Yost paying $7,500.00 out of community funds of himself and wife, Juanita Yost, and the Newells paying $250.00 each. [37]

7. At the first meeting of directors, held on February 6, 1935, Robert L. Newell was elected president and sales manager, Richard B. Newell was elected vice president and chief engineer, and George W. Yost was elected secretary, which offices they continued to hold during the entire operations of the company. The salary of the two Newells was originally fixed at $250.00 per month and, in addition thereto, the two Newells and Yost were each to receive adjusted compensation at the end of each calendar year of one-third of that amount of the net profits for such year as was in excess of an amount necessary to pay eight per cent dividends on all stock outstanding at the beginning of the year. A copy of the minutes of said meeting of Feb-

ruary 6, 1935, is hereto attached, marked Exhibit "2," and made a part hereof.

8. During the eleven months of 1935, Tricoach Corporation had net sales of $82,805.39, and the results of its business for said year were as follows:

Net Income, exclusive of officers' salaries		$ 4,404.82
Officers' salaries:		
Robert L. Newell		
11 months at $250.00	$2,750.00	
Richard B. Newell		
11 months at $250.00	2,750.00	5,500.00
Loss for year		($1,095.18)
Plus surplus adjustments		27.00
Deficit for year		$1,068.18

9. Up to December 16, 1936, the outstanding capital of the corporation had remained at $8,000.00, the amount originally paid in. On that date the three stockholders made a contribution to capital, as paid-in surplus, in proportion to their stockholdings, of sufficient to wipe out the 1935 deficit of $1,068.18 and then declared a dividend of $80.00 per share, but not to exceed the net profits for the year. As a result thereof the following dividends were paid:

George W. Yost, on 150 shares	$11,649.64
Robert L. Newell, on 5 shares	388.32
Richard B. Newell, on 5 shares	388.32
	$12,426.28

On said date subscriptions were accepted for the issuance of additional stock as follows:

George W. Yost, 348 shares	$17,400.00
Robert L. Newell, 208 shares	10,400.00
Richard B. Newell, 208 shares	10,400.00

which subscriptions were duly paid by them and said stock issued, so that as of December 31, 1936, there were outstanding 924 shares of stock, or a total paid-in capital of $46,200.00. A copy of the minutes of the directors' meeting of December 16, 1936, is hereto attached, marked Exhibit "3," and made a part hereof.

10. During 1936, Tricoach Corporation had net sales of $231,503.81, and the results of its business for [39] said year were as follows:

Net income, exclusive of officers' salaries and adjusted compensation and Federal taxes		$50,834.90
Officers' salaries and adjusted compensation:		
Robert L. Newell—		
Salary 6 mos at $250	$ 1,500.00	
Salary 6 mos. at $300	1,800.00	
Adjusted compensation	10,140.95	
	13,440.95	
Richard B. Newell (same as Robert L. Newell)	13,440.95	
George W. Yost Adjusted compensation	10,140.95	37,022.85
Net income before Income and Excess Profits Taxes		13,812.05
Income and Excess Profits Taxes		1,426.77
Net income after provision for taxes		12,385.28

The changes in its surplus account for said year were:

January 1, 1936—Deficit		($1,068.18)
December 16, 1936—Contributions by Stockholders to wipe out deficit:		
George W. Yost	$1,001.42	
Robert L. Newell	33.38	
Richard B. Newell	33.38	1,068.18
		0.00
Net income for year after provision for Federal taxes		$12,385.28
Plus surplus adjustments		41.
		12,426.28
December 16, 1936, cash dividend declared		12,426.28
December 31, 1936, surplus or deficit		None

11. On December 2, 1937, subscriptions were accepted for the issuance of additional stock as follows:

George W. Yost, 12 shares	$ 600.00
Robert L. Newell, 32 shares	1,600.00
Richard B. Newell, 32 shares	1,600.00

which subscriptions were duly paid by them and said stock issued, so that thereafter all the authorized stock of 1,000 shares was held: 510 shares by Yost and 245 shares by each of the Newells. A copy of the minutes of the directors' meeting of December 2, 1937, is hereto attached, marked Exhibit "4," and made a part hereof.

12. On December 27, 1937, there was declared a dividend of $20.00 per share, but not to exceed the net profits for the year 1937, as a result of which the following dividends were paid:

George W. Yost, on 510 shares	$ 7,968.08
Robert L. Newell, on 245 shares	3,827.81
Richard B. Newell, on 245 shares	3,827.81
	$15,623.70

A copy of the minutes of the directors' meeting of December 27, 1937, is hereto attached, marked Exhibit "5," and made a part hereof. [41]

13. During 1937, Tricoach Corporation had net sales of $341,887.18 and the results of its business for said year were as follows:

Net income, exclusive of officers' salaries and adjusted compensation and Federal taxes			$60,745.69
Officers' salaries and adjusted compensation:			
Robert L. Newell			
Salary	$ 3,600		
Adjusted compensation	11,927.71	$15,527.71	
Richard B. Newell (Same as Robert Newell)		15,527.71	
George W. Yost			
Adjusted compensation		11,927.71	42,983.13
Net income before Federal taxes			17,762.56
Income and Excess Profits Taxes			2,142.86
Net income after provision for taxes			$15,619.70

The changes in its surplus account for said years were:

January 1, 1937, surplus or deficit	None
Net income after taxes	$15,619.70
Plus surplus adjustment	4.00
	15,623.70
Cash Dividend, December 27, 1937	15,623.70
December 31, 1937, surplus or deficit	None

14. As of the end of 1937, Yost, on his original investment of $7,500.00 in the Tricoach Corporation, had received from the corporation in the two years 1936 and 1937, the following:

1936	Dividends	$11,649.64
	Salary	10,140.95
1937	Dividends	7,968.08
	Salary	11,927.71
	Total	$41,686.38

out of which he had made the following payments to the Tricoach Corporation:

1936	Pro rata of 1935 deficit	$ 1,001.42	
	Investment in 348 additional shares	17,400.00	
1937	Investment in 12 additional shares	600.00	19,001.42
Leaving him with a net amount of			$22,684.96

and he owned 510 fully paid up shares, or 51% of the stock of Tricoach Corporation.

15. As of November 1, 1937, the two Newells and Yost formed a partnership under the name of Tricoach Sales Company, to carry on the general business activities appertaining to the wholesale and retail distribution of motor vehicles and trading in commercial paper relating to such transactions. The Newells each contributed $10,000.00 and Yost $20,000.00, Yost having a 50% interest and each of the Newells a 25% interest in the partnership. Robert L. Newell was to devote most of his time [43] to the partnership as general manager in charge of all sales promotion activities of the firm and was to receive $200.00 a month, which was to be con-

sidered an expense of the business before ascertaining the net profits of the firm's business. Richard B. Newell was to have charge of all matters relating to engineering services and construction, specifications and purchase contracts. George W. Yost was to approve all transactions relating to extended time payment, the purchase and sale of commercial paper, the borrowing of funds, and other similar financial matters. For the two months in 1937 the firm's net profits were $526.00, of which amount Yost's share was $263.00. A copy of said partnership agreement marked Exhibit "6" is hereto attached and made a part hereof.

16. In March, 1936, Heiser's, Inc., made an assignment for the benefit of creditors, and during said year all of its machinery and equipment was sold to Pacific Car & Foundry Co., which installed said machinery and equipment in its Renton plant and started a bus-body manufacturing plant in competition with Tricoach Corporation, but such venture resulted in a considerable loss to the Pacific Car & Foundry Co. in each of the years 1936 and 1937.

17. For several months throughout 1938, Pacific Car & Foundry Co. negotiated with the Newells and Yost for the purpose of accomplishing a merger or consolidation or some other method to eliminate the competition of Tricoach Corporation [44] and to secure the services of the two Newell brothers to manage the production and sales of the Motor Coach Division of Pacific Car & Foundry Co.

18. The arrangement finally worked out con-

templated the leasing by Tricoach Corporation of all its machinery and equipment to the Newells for ten years, together with an option to them to purchase, by December 31, 1938, at its depreciated book value, said machinery and equipment, and the Newells were to sublease to Pacific Car & Foundry Co. all of said Tricoach Corporation's machinery and equipment for 7½ years from October 1, 1938, and it was to be moved at Pacific's expense to its Renton plant. Pacific was to operate its Motor Coach Division for 7½ years from October 1, 1938, and to employ the Newells for said period at a minimum salary of $250.00 per month each, and in addition thereto, to pay each of the Newells 1/6 of the profits of the business of the Motor Coach Division earned during said term. Richard B. Newell was to have charge of and manage the production end and Robert L. Newell was to manage the balance of the business of the Motor Coach Division. Pacific was to purchase, as needed, for cash, at then market prices, all of Tricoach Corporation's materials inventory and Pacific was to furnish free storage space therefor if said inventory was moved to its Renton Plant. A copy of said agreement entered into, as hereinafter stated, is [45] attached hereto as Exhibit "7" and made a part hereof.

19. At the same time the foregoing agreement, Exhibit "7," was negotiated between Pacific Car, the Newells, Tricoach Corporation and Yost, the Newells and Yost entered into further agreements which contemplated an arrangement whereby Yost

would loan to each of the Newells, without interest, $4,187.83 to be used by each of them to purchase from Tricoach its machinery and equipment, which the Newells were to sublease to Pacific, and each of the Newells would pay to Yost an amount equivalent to one-third of the first $37,500.00 each of the Newells should receive out of their respective shares of one-sixth of the prospective profits of the Motor Coach Division, to be paid to Yost within three days after the Newells had received their settlement of said profits. One-half of all such payments was to be applied by Yost in payment of the $4,187.83 to be loaned by Yost to each of the Newells until such loans were paid in full. A copy of the agreement entered into, as hereinafter stated, by Yost with Robert L. Newell and also that with Richard B. Newell, are hereto attached as Exhibits "8" and "9" and made a part hereof.

20. At a joint meeting of the stockholders and directors of Tricoach Corporation held August 2, 1938, a resolution was adopted to suspend the manufacturing operations of the [46] corporation on or about October 1, 1938; to gradually liquidate its affairs; to enter into the proposed agreement with Pacific Car & Foundry Co.; and to enter into a lease-agreement with the Newells for lease of the corporation's manufacturing machinery and equipment, with an option whereby they might purchase such machinery and equipment on or before December 31, 1938, for cash, at its depreciated book value, which option the Newells exercised. A copy

of the minutes of said meeting of August 2, 1938, is hereto attached, marked Exhibit "10," and made a part hereof.

21. Thereafter, on August 3, 1938, a four-party agreement (Exhibit "7," hereto attached,) was duly entered into between Pacific Car & Foundry Co., as first party, the two Newells as second parties, Tricoach Corporation as third party, and George W. Yost as fourth party, to carry out the proposed arrangement.

22. On said August 3, 1938, George W. Yost entered into two separate, identical contracts (Exhibits "8" and "9," hereto attached,) one being with Robert L. Newell and the other being with Richard B. Newell, to evidence their respective agreements with Yost in regard to payment to Yost of a share of the respective profits to be received by each of the Newells out of the Motor Coach Division business.

23. In 1940, there was paid to Yost by the Newells, under their respective agreements, the following payments, [47] which were applied by Yost as follows:

	Robert L. Newell	Richard B. Newell	Total
Payments received by Yost	$2,603.65	$2,603.65	$5,207.30
Applied toward payment of their loans	1,301.83	1,301.82	2,603.65
Treated by the Yosts as a community capital gain in their returns	1,301.82	1,301.83	2,603.65

24. On June 26, 1940, Yost received $25,500.00

and the two Newells each received $12,250.00 from the Tricoach Corporation as a liquidating dividend. Each of said parties duly acknowledged receipt of the foregoing sums and directed that the proceeds be paid over by the corporation to Tricoach Sales Company and be charged to their respective accounts. The receipts and such directions are set out in Exhibit "11," hereto attached and made a part hereof. Said stock had cost the Yosts its $25,500.00 par value plus $1,001.42 pro rata of the 1935 deficit, or a total of $26,501.42, resulting in a community capital loss of $1,001.42. Respondent in determining the deficiencies asserted herein has allowed as a community deduction to petitioners 50% of said long-term capital loss of $1,001.42, or $500.71, and allowed each of the petitioners a deductible loss of one-half thereof, or $250.35. This item is not in controversy herein. [48]

25. In 1941, there was paid to Yost by the Newells, under their respective agreements, the following payments, which were applied by Yost as follows:

	Robert L. Newell	Richard B. Newell	Total
Payment received by Yost	$9,286.00	$9,286.00	$18,572.00
Applied toward payment of balance of loans	2,886.00	2,886.01	5,772.01
Treated by the Yosts as a community capital gain in their returns	6,400.00	6,399.99	12,799.99

26. In 1942, Yost received final payments of $610.34 from each of the Newells under their respective agreements. This made the total amount

received from each of the Newells $12,499.99, or a total of $24,999.98 from both of them.

27. In each petitioner's 1940 Income Tax Return there was reported as a long-term capital gain $1,301.82, being his community one-half of the $2,603.65 received from the two Newells in 1940 after the above-mentioned application on their indebtedness, and as such long-term capital gain there was taken into account, for tax purposes, only 50% thereof, or $650.91.

28. Respondent in each of his Deficiency Letters held that said amount of $1,301.83, received by each petitioner [49] in 1940, was not a capital gain but was ordinary income taxable in full, thereby increasing each petitioner's taxable income for 1940 by $650.91.

29. That if said amount of $1,301.82 was correctly reported as a long-term capital gain and only 50% thereof was to be taken into account for income tax purposes, then, due to certain other adjustments made by respondent in his Deficiency Letter, and to which no exception is taken, each petitioner claims his correct deficiency for 1940 would be only $2.57.

30. In each petitioner's 1941 income tax return there was reported as a long-term capital gain $6,400.00, being his community one-half of the $12,800.00 received from the two Newells in 1941 after the above-mentioned application on the balance of their indebtedness, and as such long-term capital

gain there was taken into account, for tax purposes, only 50% thereof, or $3,200.00.

31. Respondent, in each of his Deficiency Letters, held that said amount of $6,400.00 was not a capital gain, but was ordinary income taxable in full, thereby increasing each petitioner's taxable income for 1941 by $3,200.00.

32. That if said amount of $6,400.00 was correctly [50] reported as a long-term capital gain and only 50% thereof, or $3,200.00, was to be taken into account for income tax purposes, then there would be no deficiency for 1941.

ALFRED J. SCHWEPPE,
MAURICE R. McMICKEN,
Counsel for Petitioners.
J. P. WENCHEL,
W. H. P.,
Counsel, Bureau of Internal Revenue, Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Nov. 2, 1944. [51]

EXHIBIT NO. 1

(Copy)

ARTICLES OF INCORPORATION OF TRICOACH CORPORATION

Approved Jan. 28, 1935. Ernest N. Hutchinson, Secretary of State, By Charles B. Reed, Assistant Secretary of State.

Know All Men By These Presents: That we, the undersigned, George W. Yost, resident of Edmonds, Snohomish County, Robert L. Newell, and Richard B. Newell of Seattle, King County, State of Washington being citizens of the United States, do hereby associate ourselves together as a corporation under and by virtue of the general incorporation laws of the State of Washington, and do hereby adopt the following

ARTICLES OF INCORPORATION

ARTICLE I.

The name of this corporation shall be Tricoach Corporation.

ARTICLE II.

The objects for which this corporation is formed are and shall be:

1. To manufacture, buy, sell, hire and rent motor coach bodies, motor coaches, street cars, railroad coaches, automobiles, auto trucks, trailers, motorcycles, air craft, bicycles and all other vehicles and also all sorts of water craft.

2. To operate, conduct and engage in the motor coach transportation, motor express and freight transportation of any and all kinds.

3. To engage in, carry on or conduct, either as principal or agent, the business of a garage, auto repair shop, automobile service station or stations.

4. To own, operate, conduct and engage in the

motor coach transportation business, both intra-state and inter-state.

5. To engage in, carry on or conduct, either as principal or agent, the business of automobile dealer or automobile agency.

6. To buy and sell, at wholesale or retail, either as [53] principal or agent, motor coaches, automobiles, auto trucks, trailers, motor vehicles, bicycles, air craft and automobile supplies, equipment and accessories of every kind.

5. A. To manufacture, buy, sell, hire all kinds of water conveyances, whether for pleasure or otherwise.

6. A. To engage in the water ferry transportation business.

7. To purchase and otherwise acquire, lease, let, mortgage, sell and convey, and otherwise hold and dispose of, land and other real estate and interest in real estate of every kind.

8. To purchase or otherwise acquire, lease, mortgage, sell and otherwise deal in goods, wares, merchandise, and all kinds of personal property, and carry on a general merchandise business, either wholesale or retail.

9. To carry on a brokerage and commission business of any and every kind.

10. To charge and receive compensation for doing any of the things herein specified.

11. To construct, or otherwise acquire and hold

or maintain, and operate terminals, waiting stations, buildings, offices, repair shops, storage rooms, gas stations and other structures, together with all necessary appliances and equipment for the same necessary to the successful conduct of the business provided for in these articles.

12. To subscribe for, acquire by purchase or otherwise, and to own, hold, vote, sell, assign and transfer shares of the capital stock of any other corporation or corporations whether organized under the laws of this State or any other laws whatsoever.

13. To borrow money and to become indebted by the purchase or lease of any kind of property, real, personal or mixed, and to contract debts of any kind for carying on any of the business of this corporation or acquiring any property desired therefor, and to issue notes, bonds, debentures and other evidence of [54] indebtedness, negotiable or otherwise, and to market or pledge all or any part of the property of this corporation to secure payment thereof.

14. To do all other acts and things necessary and convenient for accomplishing the objects hereinabove specified and to do any other act or acts, thing or things, that may be necessary or proper to successfully accomplish or promote the objects and purposes of this corporation and to do any and all things herein set forth to the same extent as natural persons could do in any part of the world.

Article III.

The time of the existence of this corporation shall be fifty (50) years from and after the date of the execution of these Articles.

Article IV.

The principal place of business of this corporation shall be at 703 6th Avenue North, city of Seattle, in King County, Washington.

Article V.

The amount of capital stock of this corporation shall be Fifty Thousand dollars ($50,000.00) of common stock which shall be divided into one thousand (1,000) shares of the par value of Fifty dollars ($50.00) each.

Article VI.

This corporation will start with a capital of Two Thousand Five Hundred dollars ($2,500.00) which will be paid in cash.

Article VII.

The number of directors of this corporation shall be three (3). The names of the first directors who shall manage the affairs of this corporation for six (6) months from the date of incorporation shall be George W. Yost, Robert L. Newell, and Richard B. Newell. The addresses of the Directors who are also [55] the Incorporators are: Geo. W. Yost, corner 5th & Alder Streets, Edmonds, Washington; Robert L. Newell, 438 39th North, Seattle, Wash-

ington; and Richard B. Newell, 3891 44th N. E., Seattle, Washington.

The Incorporators hereby subscribe for stock in this Corporation as follows:

Geo. W. Yost	150 shares
Robert L. Newell	5 shares
Richard B. Newell	5 shares

In Witness Whereof, we, the said George W. Yost, Robert L. Newell, and Richard B. Newell have hereunto set our hands and seals in triplicate at the city of Seattle, County of King, Washington, this 26th day of January, 1935.

GEO. W. YOST
ROBERT L. NEWELL
RICHARD B. NEWELL

State of Washington,
County of King—ss.

This day, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared George W. Yost, Robert L. Newell, and Richard B. Newell, to me known to be the identical persons described in and who executed the foregoing Articles of Incorporation, in triplicate, and that they severally acknowledged to me, each for himself, that he signed and sealed and executed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my

hand and affixed my official seal this 26th day of January, 1935.

(Seal) L. P. ELLINGTON
Notary Public in and for the State of Washington, residing at Des Moines. [56]

EXHIBIT NO. 2

(Copy)

MINUTES OF FIRST MEETING OF DIRECTORS

The first meeting of the Board of Directors of Tricoach Corporation was held at 310 Central Terminal Bldg. in the City of Seattle, County of King and State of Wash. at 7:30 o'clock P. M., on the 6th day of Feb. A. D. 1935, in pursuance of the foregoing call and waiver of notice.

Robert L. Newell was chosen as temporary Chairman, and Geo. W. Yost was appointed temporary Secretary of the meeting.

On a roll call of the Directors by the Secretary the following were found to be present: Robert L. Newell, Richard B. Newell, Geo. W. Yost.

A quorum being present, on motion duly made and carried, the Board proceeded to the election of officers of the corporation to serve for the ensuing corporate year and until the election and taking of office of their successors.

The following officers were duly elected: President, Robert L. Newell; Vice-President, Richard B. Newell; Secretary, Geo. W. Yost; Treasurer, Richard B. Newell.

The Secretary-elect having been duly sworn, the permanent officers of the corporation took charge of the meeting.

On motion duly made and carried, the following were named a committee to draft by-laws and submit them to the Board during this meeting. Geo. W. Yost. [57]

The Committee for drafting by-laws now having reported and submitted a code of by-laws to the Board, the same was considered and discussed and, upon motion duly made and carried, was adopted, and ordered spread upon the records of this corporation immediately following the Minutes of this meeting.

A form of stock certificate having been presented for approval, the same was by motion adopted as the form of stock certificate of the corporation, and the Secretary was ordered to attach the same on page following by-laws of this record.

The following motions were also duly made and carried:

Moved, that the President be, and he hereby is, ordered to rent the premises at 703 6th Ave. N., Seattle, Wash. at an annual rental of not to exceed $1950.00, said premises to be used for, and being hereby designated as the principal office of this corporation.

Moved, that the Treasurer be, and he hereby is, ordered to open a bank account in the name of the corporation with Pacific National Bank, Seattle, for the deposit of funds belonging to the corporation, such funds to be withdrawn only by check of

the corporation, signed by any two of its Officers.

Moved, that a seal, bearing the words Tricoach Corporation, Washington, Corporate Seal, 1935 and identified by an impression thereof on the margin of this page, be, and hereby is, adopted as the seal of this corporation.

(Impression of Seal.) [58]

Moved, that the Secretary be, and hereby is, instructed to purchase such record books and books of account, stationery and office supplies as may be necessary for the proper administering of the affairs of the corporation.

Moved, that the Secretary be, and hereby is, ordered to file the Articles of Incorporation with the King County Auditor for public record, and to do any and all things necessary in accordance with the law in such case made and provided.

Moved, that the Treasurer be, and hereby is, directed to pay all expenses properly incurred in the organization of the corporation.

By motion properly made and carried Robt. L. Newell was employed as Sales Manager at a salary of $250.00 per month; and Richard B. Newell was employed as Chief Engineer at a salary of $250.00 per month.

The following motion was properly carried:

In addition to salaries of Robt. L. Newell and Richard B. Newell, respectively, as above set forth; each officer of the Corporation, including Geo. W. Yost, Secretary, shall receive adjusted compensation at the end of each fiscal year in an amount equivalent to the net profits of the corporation for

such fiscal year which shall be in excess of an amount necessary to provide sufficient earned surplus from which cumulative dividends at the rate of 8% per annum may be paid upon the par value of all outstanding capital stock at the beginning of each year. Such [59] corporation net profits to be determined by the accrual method of accounting; all income taxes to be considered an expense of the year in which the income is earned.

On motion duly made and carried, the meeting was adjourned.

ROBERT L. NEWELL
President
GEO. W. YOST
Secretary [60]

EXHIBIT No. 3

(Copy)

DIRECTORS SPECIAL MEETING

Dec. 16, 1936.

Meeting was held at office of Company at 7:30 P. M. with all Directors present.

Minutes of previous special meetings were approved as read.

By motion properly made and carried a cash dividend was authorized, payable immediately, in the sum of $80.00 per share to all Stockholders of record as of Dec. 15, 1936; in event said dividend exceeds the net profits on Dec. 31, 1936, then said excess is to be refunded by all stockholders as soon as the amount thereof is ascertained.

By motion properly made and carried the following subscriptions for issuance of additional stock were accepted:

Geo. W. Yost	348 shares	$17,400.00
Robt. L. Newell	208 "	10,400.00
Richard B. Newell	208 "	10,400.00

By motion properly made and carried the Secretary was authorized to sign copies of resolutions to the Peoples Bank & Trust Co. and the Pacific National Bank said resolutions to authorize the withdrawal of funds by checks signed by any one of the following: Geo. W. Yost, Robt. L. Newell, Richard B. Newell.

By motion properly made and carried the contributions set out in the attached authorization were accepted and ordered credited to Paid-in-Surplus. Said donations being as follows:

Geo. W. Yost	$1001.42
Robt. L. Newell	33.38
Richard B. Newell	33.38

Meeting adjourned.

GEO. W. YOST
Secretary [61]

(Copy)

Tricoach Corporation
Builders of All Metal Coaches

6th N. and Roy, Seattle, Wash. Phone Gar. 8888

December 16, 1936.

We, the undersigned stockholders of the Tricoach

Corporation, for the purpose of eliminating deficit resulting from operations during the year of 1935, hereby authorize that our drawing account be charged with the amounts set opposite our respective names and the aggregate thereof credited to paid in surplus.

Geo. W. Yost	$1,001.42
Richard B. Newell	$33.38
Robert L. Newell	$33.38 [62]

EXHIBIT No. 4

(Copy)

RECORD OF MINUTES
DIRECTORS' SPECIAL MEETING.

Dec. 2, 1937.

Meeting was held in private dining room at Wash. Athletic Club, 7:30 P. M. with all Directors present.

Minutes of previous meeting were approved as read.

By motion properly made and carried subscriptions for new stock were accepted and authorized issued as follows:

Geo. W. Yost	12 Shares	$600.00
Robt. L. Newell	32 "	1600.00
Richard B. Newell	32 "	1600.00

Action pertaining to employee's bonuses and annual dividends was deferred to a later meeting to be held this month.

Meeting adjourned.

GEO. W. YOST
Secretary [63]

EXHIBIT No. 5

(Copy)

RECORD OF MINUTES
DIRECTORS SPECIAL MEETING

Dec. 27, 1937.

Meeting was held in private dining room of Washington Athletic Club, 6:30 P. M. with all Directors present.

Minutes of previous meeting were approved as read.

By motion properly made and carried a cash dividend was authorized, payable immediately, in the sum of $20.00 per share to all Stockholders of record as of Dec. 27, 1937; in event said dividend exceeds the net profits on Dec. 31, 1937, then said excess is to be refunded by all stockholders as soon as the amount thereof is ascertained.

Meeting adjourned.

GEORGE W. YOST
Secretary [64]

EXHIBIT No. 6

ARTICLES OF CO-PARTNERSHIP

This Agreement, entered into at Seattle, Washington, this 27th Day of December, 1937, by and

between Richard B. Newell, Robert L. Newell and George W. Yost, Witnesseth:

1. That the said parties have formed and do hereby form a co-partnership for the purposes of carrying on general business activities appertaining to the wholesale and retail distribution of motor vehicles (Automobiles, trucks, passenger coaches, bodies, chassis, etc.), and trading in commercial paper relating to such transactions; to be conducted under the firm name of—Tricoach Sales Company, with offices and principal place of business in the City of Seattle, County of King, State of Washington.

2. Said partnership commenced business on November 1, 1937, and shall continue, at will, from year to year, until dissolved.

3. The said parties have contributed the following sums of money, in cash, set opposite their respective names, which shall be and is the initial invested capital of the partnership to be used, laid out, and employed in the business of said firm for their mutual benefit:

(Name of Partner)	(%)	(Invested Capital)
Richard B. Newell	25%	$10,000.00
Robert L. Newell	25%	10,000.00
George W. Yost	50%	20,000.00
Total invested capital		$40,000.00

Any increase or decrease in the investment accounts of the parties shall be made in such amounts as will not change the ratio each respective party's investment bears to the total investment of all parties to this agreement.

4. Each party covenants with the other, that during the existence of said partnership, and for a period of one year after the sale of [65] partnership assets pursuant to the provisions of paragraph eleven (11), he will not engage in any competitive enterprise, for himself, as a member of another partnership, or as an officer or employee of another person, firm, or corporation, within the States of Washington, Oregon, and California, without the written consesnt of all other parties to this agreement. Permission is hereby granted for the respective parties to continue their activities with any and all firms and corporations with whom they are engaged on the date of this agreement.

5. The active management of the firm's business activities shall be shared equally by all partners; however, the particular duties of each partner are designated as follows:

(a) Richard B. Newell shall approve all construction specifications, purchase contracts, and have charge of all matters relating to engineering service.

(b) Robert L. Newell shall bear the title of "General Manager," and shall have charge of all sales promotion activities of the firm.

(c) George W. Yost shall approve all transactions relating to extended time payments, the purchase and sale of commercial paper, the borrowing of funds, and other similar financial matters.

Each partner shall devote sufficient time to the activities of the partnership as may be necessary to properly manage and conduct its affairs. It being

anticipated that Robert L. Newell will devote a greater portion of his time to the affairs of the partnership than shall be required of the other partners, it is hereby agreed that said Robert L. Newell shall receive a salary in the amount of $200.00 per month, payable, semi-monthly if desired, out of partnership funds, which shall be taken into consideration as an expense of the business for the purpose of ascertaining net profits or losses at the close of each fiscal year. All partners shall be reimbursed for traveling expenses, use of private automobiles, etc., upon presentation of itemized expense voucher.

6. Each party covenants with the other parties, that all net [66] profits or losses resulting from operations of the said business shall be determined at the close of each calendar year and shall be shared in the following manner:

(a) Net losses: Richard B. Newell, 25%; Robert L. Newell, 25%; George W. Yost, 50%, and shall be charged to their respective investment accounts;

(b). Net profits, not in excess of 40% of invested capital as shown by partners' investment accounts on July 1 preceding: Richard B. Newell, 25%; Robert L. Newell, 25%; George W. Yost, 50%, and shall be credited to their respective drawing accounts;

(c) Net profits, in excess of 40% of invested capital as shown by partners' investment accounts on July 1 preceding: Richard B. Newell, One-

third; Robert L. Newell, One-third; George W. Yost, One-third, and shall be credited to their respective drawing accounts.

7. That good, true and complete books of account of said business shall be kept by double entry on the accrual basis, which shall contain a historical record of the business transactions entered into by said partnership; said books of account and supporting records shall be kept at the general office of the firm and shall at all times be available for examination and inspection by any partner or his duly authorized representative.

8. A meeting of the partners, or their duly authorized representatives, shall be held at the office of the firm or such other place as may be mutually agreed upon, immediately following the date upon which the net profits or losses for the preceding year have been ascertained; at which meeting action shall be taken for the distribution or other disposition of any profits that may have been earned during the preceding year. Undistributed profits and/or funds remaining in any partner's drawing account shall bear interest on the average monthly credit balance therein at the rate of six (6) per cent per annum, said interest to be added to each respective partner's drawing account and taken into consideration as an expense of the business [67] for the purpose of ascertaining net profits or losses at the close of each fiscal year.

9. All cash funds received by the partnership shall be deposited, in the name of the firm, in a bank or banks as may be designated from time to

time, and shall be subject to withdrawal by check signed by any one partner. Each party covenants with the other parties, that during the existence of said partnership; he will not, without the written consent of all other parties, withdraw funds from the business, or incur an obligation against the firm, for his personal use, in an amount which at the particular time shall exceed any credit balance remaining in his respective drawing account. Nothing contained in this paragraph is intended to modify or restrict the provisions of paragraph five (5) authorizing payment of salary allowance and the reimbursement of traveling expenses incurred by the respective partners.

10. In event of the death of any party to this agreement, the books of account shall be closed and the amount of the deceased partner's investment account shall be determined by transferring thereto his pro-rata share of undistributed profits or unapportioned losses, together with any balance remaining in his drawing account at the time of his death. At the option of the surviving partners they may acquire title and ownership of all the assets of the partnership business, including goodwill, upon payment by them of all partnership debts and the further payment to the estate of the deceased party an amount equivalent to the said investment account, all of which payments may be made out of partnership funds. In event the surviving parties shall not avail themselves of the option privilege described herein within sixty (60) days following the death of the deceased partner

or within such extended time as may be granted, they shall proceed, with the advice and cooperation of the deceased party's executor or administrator, to liquidate and wind up the affairs of the partnership.

11. In event any party may desire to terminate this agreement, dissolution of the partnership may be accomplished by mutual consent, [68] or in the following manner:—the party proposing the dissolution shall by written notice inform the other parties of his intention, and in such notice shall offer to purchase all the assets of the business (other than cash on hand and due from bank), including goodwill, for a specific monetary consideration, of which not less than 25% shall be payable in cash on the eleventh day following (Sundays and holidays excluded), and the balance payable in equal monthly installments during the ensuing twelve (12) months period together with interest on deferred payments at the rate of six (6) per cent per annum, the buyer to furnish adequate security to guaranty payment of the deferred installments and interest. The parties receiving the notice shall be deemed to have accepted the proposal unless within ten days thereafter (Sundays and holidays excluded) they shall elect, jointly or individually, to purchase the said assets at the same values and under the same terms proposed by the other party; and in the event of such election or acceptance, the buyer shall thereupon pay into the partnership treasury the initial cash payment set forth in the original proposal and shall execute and deliver into the hands of one of the other parties,

promissory notes, properly secured, covering the unpaid balance payable during the ensuing twelve months. The funds thus obtained from the sale of the partnership assets, together with cash on hand and due from bank, shall be disbursed in the following order:—

(a) In payment of partnership debts and expenses of dissolution;

(b) To the partners in equal amounts, but not in excess of any credit balance remaining in their respective drawing accounts; it being the intention that each party shall collect the full amount remaining to his credit in his respective drawing account before any payments are made in liquidation of the investment accounts:

(c) To: Richard B. Newell, 25%; Robert L. Newell, 25%; George W. Yost, 50%.

12. In event there shall be insufficient funds available to pay all partnership debts as they may mature, the party who voluntarily contributes the deficit or who may be compelled by court action to [69] make payments direct to creditors, shall receive credit in his drawing account for the amount of such payments, and shall be entitled to receive full and complete reimbursement of the funds thus advanced, together with interest at the rate of twelve (12) per cent per annum, from any funds subsequently received in the partnership treasury before payments in liquidation or otherwise are made to any other partner. Until reimbursed in full, the party or parties making such

advances shall have full charge of the partnership business affairs; and in event sufficient partnership funds are not forthcoming within six months after the date of the first unrecovered advancement of funds, said party or parties shall have a valid debt against the other party, or either of the other parties, for their pro-rata share of the total deficiency.

13. Any dispute or controversy arising between the partners, in respect to the dissollution and liquidation of said partnership, at the option of any party, may be submitted to arbitration under the rules of the American Arbitration Association then in effect, and each party covenants with the other parties to accept and abide by the award of such arbitration board.

In Witness Whereof, the said parties have hereunto subscribed their names, in triplicate, at Seattle, Washington, the day and year first above written.

ROBERT L. NEWELL,
RICHARD B. NEWELL,
GEO. W. YOST.

In presence of—

PAUL R. STROUT. [70]

EXHIBIT NO. 7
(Copy)
AGREEMENT

This Agreement, made this 3rd day of August, 1938, by and between Pacific Car and Foundry Company, a Washington corporation, hereinafter

Exhibit No. 7—(Continued)

designated First Party; Robert L. Newell and Richard B. Newell, hereinafter designated Second Parties; Tricoach Corporation, a Washington corporation, hereinafter designated Third Party, and George Yost, hereinafter designated Fourth Party;

Witnesseth:

Whereas, First party, among other things, is engaged in the business of manufacturing and selling all types of passenger and commercial bodies for use in the transportation of passengers and freight upon all types of automobiles, trucks and trackless trolleys, under a division of its organization known as the Motor Coach Division; and

Whereas, second parties and fourth party own all of the capital stock and constitute the Board of Directors of the third party, which company is engaged in the same business as the Motor Coach Division of the first party and in competition with the first party; and

Whereas, first party desires to employ second parties to be managers of the Motor Coach Division of the first party and to lease the physical assets listed and set forth in the inventory attached hereto and marked Exhibit "A", upon terms, provisions and conditions hereinafter set forth; and

Whereas, second and fourth parties, by reason of their complete ownership and control of said third party, are in a position to discontinue the business operations of third party; and [71]

Exhibit No. 7—(Continued)

Whereas, third party has leased to the second parties all of the physical assets of the third party listed and set forth in the inventory attached hereto and marked Exhibit "A"; now, therefore,

In Consideration of the premises and of the mutual promises and agreements herein contained, It Is Hereby Agreed by and between the parties hereto, as follows:

I. Second parties do hereby sub-lease to the first party, for a term of seven and one-half (7½) years from the 1st day of October, 1938, all of the personal property listed and set forth in the inventory hereto attached and marked Exhibit "A" and now located principally at 703 Sixth Avenue North, in Seattle, Washington, at a monthly rental of One Hundred Dollars ($100.00) per month, payable in advance on or before the 5th day of each and every month during said term. First party agrees to pay said rental for said term in the manner above set forth and agrees to keep said property in a good state of repair; agrees to carry fire insurance for the benefit of third party to the full value of said property; agrees to pay all taxes hereafter levied on said property during the term of this lease and agrees to pay three-twelfths (3/12) of the personal property taxes on said property for the year 1938; agrees to move all of said property to first party's plant near Renton, Washington, and agrees to install such portions of said property as may be

Exhibit No. 7—(Continued)

needed, all without expense to second, third and fourth parties; and agrees not to thereafter move said property or assign this lease, or any interest therein, or sublet said property or any portion thereof without the written consent of second parties. This lease shall not be assignable by operation of law.

II. In consideration of second parties' entering into said lease, discontinuing the business of third party, and of other good and valuable consideration, first party does [72] hereby agree, subject to the provisions of Paragraphs XXI and XXII, to continue to operate its said Motor Coach Division for a period of seven and one-half (7½) years from October 1, 1938, and does hereby employ the second parties to manage the said Motor Coach Division of the first party for said period of 7½ years from October 1, 1938, upon the following terms and conditions, to wit:

Each of said second parties will receive a minimum salary of Two Hundred Fifty Dollars ($250.00) per month as long as he shall be employed by and act as manager of said Motor Coach Division. Richard B. Newell shall take charge of and manage the production of the Motor Coach Division and Robert L. Newell shall take charge of and manage the balance of the business of the Motor Coach Division. In addition to said minimum salary above mentioned, first party will pay to each of second parties one-sixth (1/6) of the

Exhibit No. 7—(Continued)

"profits" of the business of said Motor Coach Division earned during said term of years. Said "profits" for the purpose of this agreement shall be determined as follows:

(a) The business of said Motor Coach Division shall not be charged with any part of first party's executive or managerial overhead or officers' salaries, commissions or bonuses, regardless of the benefits which may be derived by said Motor Coach Division from the services of any such officers, executives or managers, but there shall be charged against the cost of operating the business of said Motor Coach Division the minimum salaries of the second parties, each in the sum of $250.00 per month, and all other charges and expenses in connection therewith as are reasonable and allowable under regular and standard accounting practices, except as hereinafter provided. [73]

(b) Said Motor Coach Division shall not be charged with any tax now or hereafter created or levied by any Federal, State, County, municipal or other governmental authority upon or on account of net income and/or surpluses and/or undivided profits, but said Motor Coach Division shall be charged with any other tax or excise.

(c) During the life of this agreement, first party will supply said Motor Coach Division with ground and floor space, buildings, facilities and means of ingress and egress for conducting the business of

Exhibit No. 7—(Continued)

said Motor Coach Division, as set forth upon Exhibit "B" attached hereto. Said Motor Coach Division shall be charged with a rental of..... .....Dollars ($.....) per month for the use of said premises, buildings, facilities and means, and the same shall be maintained at all times in a good state of repair by the first party and no charge shall be made against the Motor Coach Division for repairs, insurance, taxes, upkeep or maintenance of said premises, except such repairs and maintenance as may be incurred by reason of the negligence of any employee in said Motor Coach Division.

In the event it shall become necessary to provide additional space for the business of said Motor Coach Division, the same shall be provided by the first party upon the following basis: In the event existing buildings are available and can be used advantageously, an additional rental shall be charged against said Motor Coach Division for the use of the same, upon the basis of ten per cent (10%) per year of the depreciated value of said buildings used, plus any cost of remodelling or alterations, as said depreciated value is carried upon the books of first party. For the purposes of determining the depreciated value of first [74] party's buildings, it is agreed that first party shall continue to depreciate the same at the same rate and upon the same valuations now being used. In the event it is necessary to erect additional build-

Exhibit No. 7—(Continued)

ings, the same shall be erected by first party and an additional rental shall be charged against the Motor Coach Division, upon the basis of ten per cent (10%) per year upon the actual cost of such new construction and first party shall be under the same obligation to pay for repairs, insurance, taxes, upkeep and maintenance of said premises as above provided for buildings initially furnished to the Motor Coach Division. No ground rental shall be charged against the Motor Coach Division for any additional ground area needed for the erection of any additional buildings or the expansion of said Motor Coach Division but first party shall be entitled to charge to the Motor Coach Division the pro rata share for said additional ground area of any taxes imposed upon the real property of the first party by King County, Washington. In the event the buildings described in Exhibit "B" are destroyed or damaged by fire, first party will replace the same with other adequate buildings and if the cost of replacing the same shall exceed the sum of $30,000.00 and shall also exceed the amount of the proceeds of any insurance on said buildings actually collected by first party as the result of their damage or destruction, a yearly rental in addition to the amount chargeable under this paragraph, of 10% of the amount of said excess cost shall be charged to the operations of the Motor Coach Division and first party agrees that it will not replace said buildings at such excess cost with-

Exhibit No. 7—(Continued)

out the written consent of the second parties. In the event the said buildings are replaced at a cost which is less than the sum of $30,000.00, the rental herein provided for shall be proportionately reduced. In the event the personal property described in Exhibit "A" is damaged or destroyed by fire so that the same is no longer useful in the business of the first party, the [75] rental herein provided to be paid shall be reduced in the proportion that the value of the property rendered useless bears to the value of the entire property leased.

(d) Said Motor Coach Division shall be charged with depreciation upon the machinery and equipment with which it commences to do business, except the portion thereof herein leased. For the purpose of determining the depreciated value of all such machinery, tools and equipment, it is agreed that first party shall continue to depreciate the same at the same rate and upon the same valuations now being used by first party. Said Motor Coach Division shall be charged also with all repairs, taxes and insurance upon all of said machinery and equipment with which it at any time does business, and with the rental of One Hundred Dollars ($100.00) per month paid for the lease of machinery described on Exhibit "A". The Motor Coach Division shall not be charged with the expense of moving the personal property leased from second parties to Renton, Washington, but shall be

Exhibit No. 7—(Continued)

charged with 5% per annum of the cost of installing the same.

(e) In the event additional machinery, tools and equipment are needed by said Motor Coach Division, the same shall be furnished by the first party upon the following basis: Said Motor Coach Division shall be charged with five per cent (5%) per annum of the actual cost of any such property plus cost of installation, all taxes and insurance, together with a reasonable depreciation allowance thereon, which shall not exceed a fair and reasonable allowance, based upon the estimated useful life of any such machinery or property, irrespective of any depreciation allowance allowed by taxing authorities or made by first party upon its books for its own bookkeeping purposes; provided, however, that the Motor Coach Division shall only be charged with five per cent (5%) per annum of the amount by which the said [76] cost of any such property, plus the depreciated value of all other machinery, tools and equipment of the Motor Coach Division owned by first party exceeds Thirty-Two Thousand Dollars ($32,000.00).

(f) First party shall not be required to erect new buildings, to furnish machinery, tools and equipment in addition to what is on hand on October 1, 1938, unless the same is necessary to care for the growth of the business of manufacturing passenger-carrying motor vehicles or to replace

Exhibit No. 7—(Continued)

buildings, machinery, tools and equipment on hand as of October 1, 1938, and in no event shall the Motor Coach Division make sale of its products for other than cash unless the terms of the sale shall have been approved, in advance, by the first party and second parties. Upon making a sale other than for cash, the first party and the second parties shall agree upon the proper percentage of the sale price which shall be charged against the profits of the Motor Coach Division as a reserve for repossession losses and upon the time for distributing said reserve.

(g) First party agrees to furnish to said Motor Coach Division, without interest charge, all moneys needed by said Motor Coach Division for labor, materials, inventory and any other operating need in the manufacture of passenger-carrying motor vehicles or in the growth of said business, except as otherwise herein provided.

(h) No notes, bonds, warrants, contracts or other evidence of indebtedness representing the unpaid purchase price of merchandise sold shall be disposed of at a discount by the first party without the written consent of second parties and none of said instruments shall be hypothecated by the first party without the written consent of the second parties, except that said consent shall not be required for hypothecation to regular commercial banks doing business in Seattle, Washington.

Exhibit No. 7—(Continued)

(i) Said Motor Coach Division shall have the right to purchase water, light, telephone and power from first party at the same rate which first party pays for the same, such price in no event to exceed a fair and reasonable price, said Motor Coach Division to receive the full benefits of any price or rate obtained by first party on account of quantity purchases, long-term contracts, or any other advantageous arrangement under which first party may obtain water, light, telephone or power.

(j) It is understood that the first party maintains and will continue to maintain or make available, during the life of this agreement, an adequate heating plant, together with radiators, pipes, fans and vents, sufficient to heat the premises to be used by said Motor Coach Division. Said Motor Coach Division shall be furnished with heat at the actual cost thereof to first party; provided, however, that said Motor Coach Division may purchase heat elsewhere or install its own heating facilities if more advantageous to its operation.

(k) For the purpose of determining profits under this agreement, said Motor Coach Division shall not be charged with any losses or expenses incurred prior to the 1st day of October, 1938. Personal property taxes and prepaid insurance for the year 1938 upon all personal property used by said Motor Coach Division shall be pro rated, and said Motor Coach Division shall be charged with

Exhibit No. 7—(Continued)

three-twelfths (3/12) of the same. No inventory losses during 1938 shall be deducted from profits for the last three months of 1938, computed in accordance with the terms of this agreement.

III. Said Motor Coach Division will have the right to purchase from first party any products manufactured or handled by first party, at first party's actual cost; and first party shall have the same right to purchase products of the [78] Motor Coach Division upon the same basis, provided that no other department of the first party will attempt to engage in the business conducted by the Motor Coach Division and the Motor Coach Division will not engage in any other business conducted by the first party. The Motor Coach Division may engage in the business of manufacturing and selling all types of passenger and commercial bodies for use in the transportation of passengers and freight upon all types of automobiles, trucks and trackless trolleys, and said Motor Coach Division may engage in the business of manufacturing and/or assembling complete transportation units for the above purposes, except railroad trucks or logging trailers, during the life of this agreement. First party, its officers executing this agreement, and each of them, shall not be permitted to directly or indirectly own, operate, lease, conduct or have any interest in, or directly or indirectly work for, aid or assist any person, firm, corporation or organization engaging in any business similar to the business of the Motor

Exhibit No. 7—(Continued)

Coach Division, in the States of Washington, Oregon, Idaho, Montana and California while the second parties, or either of them, during the life of this agreement, remain in the employ of first party.

IV. The Motor Coach Division, until April 1, 1939, will furnish, at actual cost, guaranteed service upon all bodies sold by first party prior to October 1, 1938, and said cost will not be charged against any profits computed under this agreement, and it will, until April 1, 1939, furnish at actual cost guaranteed service upon all bodies sold by third party prior to October 1, 1938, and second parties will reimburse first party for cost of service on bodies so sold by third party. No reserve shall be created or held back in the determination or distribution of profits for service to be thereafter furnished to purchasers upon bodies or transportation units sold by said Motor Coach Division. [79]

V. As a part of the consideration of this agreement, first party agrees that said Motor Coach Division will purchase, for cash, from third party, at the then current market prices, f. o. b. Renton, Washington, all materials needed by said Motor Coach Division from time to time, until the material inventory of the Tricoach Corporation on hand at the time said Company discontinues doing business has been exhausted. It is further agreed that third party may move said inventory to first

Exhibit No. 7—(Continued)

party's plant at Renton, Washington, and that first party will furnish suitable storage space for the same, without charge to second or third parties or to said Motor Coach Division. Third party will carry insurance on said property, at its own expense. Whenever practicable, materials from this inventory shall be used in preference to other materials purchased from the outside. Third party may, at its option, sell said materials to others.

VI. Each of second parties agrees to furnish himself with a serviceable automobile to be used by him in the business of said Motor Coach Division and in going to and from said place of business. Said Motor Coach Division shall pay for all repairs, tires and upkeep upon said automobiles, gasoline and oil, license, taxes, adequate fire, theft, property damage and public liability insurance, while said automobiles are being used in the business of said Motor Coach Division and for the reasonable personal use of said parties. No charges shall be made against said Motor Coach Division for depreciation or replacement of said automobiles.

VII. Second parties, and each of them, hereby agree to work in the employ of the first party in managing the operations of said Motor Coach Division for 7½ years from October 1, 1938, and each agrees to devote all of his employable time and attention, during usual business hours during the period of such employment, [80] to the mainte-

Exhibit No. 7—(Continued)

nance, promotion and advancement of the business of said Motor Coach Division.

VIII. Each of said second parties hereby agrees that he will not, directly or indirectly, own, operate, lease, conduct or have any interest in any automobile, bus or coach body manufacturing or selling business in the States of Washington, Oregon, Idaho, Montana or California while he remains in the employ of the Motor Coach Division and agrees that he will not, during said period, directly or indirectly, work for, aid or assist any person, firm, corporation or organization engaging in any such business in said states, in competition with the business of said Motor Coach Division. Second parties may resell or assist third party in the resale of any units heretofore sold by the third party which it may become necessary for second parties or third party to repossess.

IX. It is understood and agreed that first party is not in any manner assuming or obligating itself to pay any of the debts, liabilities or obligations of second or third parties and that there is no partnership or joint venture relationship between the parties.

X. It is agreed that in the event that either Robert L. Newell or Richard B. Newell defaults in the performance of any covenant or agreement herein contained and such default shall continue for a period of thirty (30) days after notice, in

Exhibit No. 7—(Continued)

writing, from first party to the person in default, the damages which would be suffered by the first party by reason of such breach would be uncertain and difficult of proof and that, therefore, the parties hereto agree that in said event the person in default shall waive his right to receive said one-sixth (1/6) of any profits which are earned by the Motor Coach Division subsequent to the time of such [81] breach and shall pay first party the sum of Fifty Dollars ($50.00), all as liquidated damages for said breach. Any breach of this agreement by either one of said second parties or by third or fourth parties shall affeffct only the right of the party breaching this agreement and shall not adversely affect the rights of any other party hereto. The breach by one or more of said persons shall only affect their right to receive profits earned by said Motor Coach Division subsequent to the time of any such breach and shall not entitle first party to a return of any profits already distributed to any of the parties and said breach of contract shall not prevent the person in default from engaging in a business in competition with the business of the Motor Coach Division. It is hereby agreed by the parties hereto that at the termination of this agreement, whether by breach of the first party or by breach of both of the second parties, or by expiration, said second parties shall have the right to manufacture the same products as are manufactured by the Motor Coach Division during the term of this agreement and sell the same, in competition with first party.

Exhibit No. 7—(Continued)

If both of second parties default in the performance of any covenant or agreement herein contained, second parties shall, nevertheless, be entitled to terminate the lease of the personal property described in Exhibit "A" and resume the possession of said property.

XI. During the first five (5) years of the term of this contract, first party agrees to pay the premiums upon life insurance for said term of five (5) years on the life of each of said second parties, in the sum of Thirty-two Thousand Five Hundred Dollars ($32,500.00) each; that said term insurance shall be in such form and payable to such persons as second parties shall determine. The death of either Robert L. Newell or Richard B. Newell shall terminate his right and right of his heirs, personal [82] representatives and assigns to receive any portion of the profits of the Motor Coach Division which shall be earned after his death. In the event that either Robert L. Newell or Richard H. Newell are prevented from carrying out the terms of this agreement by reason of any disability, the same shall not constitute a breach of this agreement but in said event the said party under disability shall forfeit his right to his minimum salary in the sum of $250.00 per month, but shall not forfeit his right to his share of the profits of said Motor Coach Division, as herein provided. The premiums on the life insurance herein described shall be charged to the expense of operating the Motor Coach Division.

Exhibit No. 7—(Continued)

XII. The profits of the Motor Coach Division which accrue after October 1, 1938, determined in the manner herein set forth, after the deduction of all prior years' losses, shall be distributed as follows: The profits for three months ending December 31, 1938, on March 1, 1939; the profits for each calendar year thereafter, less all prior years' losses, on or before March 1st of the next succeeding year. Distribution of all profits for the first three months of 1946, less losses not already deducted, shall be made on or before the 1st day of June, 1946; any profits which, according to the terms of this agreement, shall have accrued or shall have been distributed to the second parties shall not be diminished or affected by subsequent years' losses and second parties shall be entitled to receive and retain all profits which have accrued or which shall have been distributed irrespective of any losses that may be incurred subsequent to the accrual or the distribution of such profits.

XIII. It is agreed that in the event first party defaults in the performance of any covenant or agreement herein contained and such default shall continue for a period of thirty (30) days after notice in writing from the second parties to the [83] first party, the damages which would be suffered by the second parties by reason of such breach would be uncertain and difficult of proof; that therefore, the parties hereto agree that the first party will pay to the second parties, as liquidated

Exhibit No. 7—(Continued)

damages for said breach, the sum of $20,000.00, plus one-third of the profits earned by the Motor Coach Division for a period of twelve (12) months after the date of said breach. In said event the lease by the second parties to the first party of all of the machinery, tools and equipment listed on the inventory attached hereto and marked Exhibit "A" shall cease and determine and second parties shall be entitled to the immediate possession of the property so leased. It is agreed that in the event first party defaults in the performance of any covenant or agreement herein contained for the benefit of only one of second parties and such default shall continue for a period of thirty (30) days after notice in writing from said second party to first party, the damage which would be suffered by the said second party by reason of such breach would be uncertain and difficult of proof. That therefore the parties hereto agree that the first party will pay to the said second party as liquidated damages for said breach the sum of $10,000.00, plus one-sixth (1/6) of the profits earned by the Motor Coach Division for a period of twelve (12) months after the date of said breach. It is agreed that in the event of any such breach by first party, the second party or parties against whom the contract has been breached may immediately thereafter engage in business in competition with said Motor Coach Division and his or their actions in so doing shall not affect his or their right to receive the share of profits of said Motor Coach Division

Exhibit No. 7—(Continued)

hereinabove provided for during the twelve (12) months following the date of any such breach.

XIV. First Party shall furnish to each of the second parties a monthly operating statement showing the profits and/or losses of the Motor Coach Division, computed in accordance with the terms of this agreement.

XV. Second parties, their agents, attorneys or accountants, [84] shall have complete access to the books and records of the first party relating to the operations of the Motor Coach Division at all times during regular business hours and shall be permitted to make copies of any entries upon said books or records.

XVI. All profits earned by the Motor Coach Division after October 1, 1938, on bodies or transportation units completed or sold after said date shall be distributed to the parties hereto in the same manner as if the construction of said bodies or transportation units had been begun after October 1, 1938. In consideration of the agreement in this paragraph contained, third party agrees that all orders obtained by it for bodies or transportation units subsequent to the date of this agreement shall be filled by the first party and all bodies or transportation units for which orders are obtained after the date of this agreement shall be constructed in the plant of the Motor Coach Division of first party.

XVII. In consideration of the promises of first

Exhibit No. 7—(Continued)

party herein contained for the benefit of second, third and fourth parties, each of the third and fourth parties hereby agrees that he or it will not, directly or indirectly, own, operate, lease, conduct or have any interest in any automobile, bus or coach body manufacturing or selling business in the States of Washington, Oregon, Idaho or Montana during the life of this agreement, except that fourth party may retain his present interest in the Yost Auto Company, and agrees that he or it will not, during said period, directly or indirectly, work for, aid or assist any person, firm, corporation or organization engaging in any such business, except as above provided, in said states, in competititon with the business of said Motor Coach Division.

XVIII. Third party has leased to second parties all of the property shown on Exhibit "A" attached hereto, for a period of seven and one-half (7½) years from October 1, 1938, at a monthly rental of One Hundred Dollars ($100.00) per month. If the second parties default in making any payment to the third party which may be due under the terms of the lease between the second and third parties, the third party agrees to notify first party, in writing, [85] of said default, and first party shall have a period of thirty (30) days after said notice to make good said default. Any sums expended by first party in making good the defaults of the second parties in their obligations under said lease shall be paid by the second parties to the first party, on demand.

Exhibit No. 7—(Continued)

XIX. Second parties warrant that the first party, as long as it complies with the terms of this agreement, will not be disturbed in the peaceable possession and use of the personal property described in Exhibit "A" hereto attached during the term of the lease provided for herein by any person or persons lawfully claiming a right in said personal property.

XX. It is agreed by the parties hereto that honest errors in judgment made by second parties shall not constitute a breach of this agreement by said second parties.

XXI. It is understood and agreed that the parties hereto contemplate that the business of said Motor Coach Division shall be operated for a period of 7½ years from October 1, 1938. However, in the event for any reason the first party shall decide to discontinue the business of the Motor Coach Division, such a discontinuance of said business shall not constitute a breach of this agreement by first party. In the event first party does discontinue the business of said Motor Coach Division, first party shall give a written notice of thirty days to the second party of such discontinuance. First party and its officers executing this agreement shall not own, operate, lease, conduct or have any interest in or directly or indirectly work for, aid or assist any person, firm, corporation or organization engaging in any business similar too the business of the Motor Coach Division in the States of Wash-

Exhibit No. 7—(Continued)

ington, Oregon, Idaho, Montana and California for a period of seven and one-half (7½) years from the date said business is discontinued and any breach of the foregoing provision shall constitute a breach of this contract and entitle second parties to liquidated damages herein provided for. [86] If, within thirty (30) days from the date said business has been discontinued, first party receives an acceptable bona fide offer for any part of the equipment, machinery, tools, dies, patterns, inventory of work in progress of said Motor Coach Division, it shall first tender to second parties the right to purchase the property for which an offer has been received, at the same price and upon the same terms for which said offer has been received, and the second parties shall have a period of ten (10) days after said tender with in which to purchase said property for which an offer has been received. Thereafter, and for a period of two (2) years, if first party receives an acceptable bona fide offer for any part of said property, it shall tender to second parties the right to purchase said property at the same price and upon the same terms included in said offer and second parties shall have a period of 48 hours, exclusive of Sundays and holidays, within which to purchase the same at said price and upon said terms.

XXII. It is understood and agreed that the parties hereto contemplate that the business of said Motor Coach Division shall be operated for a period of 7½ years from October 1, 1938. However, in the

Exhibit No. 7—(Continued)

event for any reason the first party shall decide to sell the properties of said Motor Coach Division that a bona fide sale by first party at any time during the life of this agreement shall not constitute a breach hereof. In the event of any such sale, first party will pay to second parties one-third of the amount by which the proceeds of any such sale of said properties of the Motor Coach Division exceed the depreciated value of the physical properties sold, as the same are carried upon the books of first party. It is further agreed that in the event first party receives a bona fide offer for the properties of the Motor Coach Division which first party is willing to accept, it shall first tender to second parties the right to purchase said properties for the same price and upon the same terms contained in said offer, less the portion of the sale price which second parties would be entitled [87] to receive in case sale were made to a third party, and second parties shall have a period of ten (10) days after said tender within which to purchase said property for said price and upon said terms.

In Witness Whereof the second and fourth parties have hereunto set their hands, and the first and third parties have caused these presents to be executed by their respective officers thereunto duly authorized and their respective corporate seals to

Exhibit No. 7—(Continued)

be hereunto affixed, this day and year first hereinabove written.

[Seal] PACIFIC CAR AND FOUNDRY COMPANY

(signed) By PAUL PIGOTT
President.

(signed) By H. N. CURD
Vice President.

(signed) By WM. PIGOTT, Jr.
Secretary-Treasurer.
First Party.

(signed) ROBERT L. NEWELL

(signed) RICHARD B. NEWELL
Second Parties.

[Seal] TRICOACH CORPORATION

(signed) By ROBERT L. NEWELL
President.

[Seal]

(signed) By GEO. W. YOST
Secretary.
Third Party.

(signed) GEO. W. YOST
Fourth Party. [88]

EXHIBIT NO. 8

(Copy)

This Agreement entered into at Seattle, Washington, this 3rd day of August 1938, by and between Robert L. Newell, of Seattle, Washington, herein-

after designated first party, and George W. Yost, of Edmonds, Washington, hereinafter designated second party, Witnesseth:

In Consideration that the second party shall consent to and enter into a certain contract between the Pacific Car and Foundry Company, a corporation, the Tricoach Corporation, a corporation, et al, copy of which is attached here to and marked "Exhibit A," and shall, on or before December 31, 1938, advance to first party the sum of Forty-one Hundred Eighty-seven 83/100 ($4,187.83) Dollars, without interest, to be used by first party for the purpose of acquiring joint ownership of the machinery and equipment to be sub-leased to the Pacific Car and Foundry Company as set forth in Exhibit "A" attached, the first party hereby agrees to pay unto second party an amount equivalent to;—

> one-third (1/3) of all compensation, or damages in lieu thereof, not in excess of Thirty-seven Thousand Five Hundred Dollars ($37,-500.00), said first party shall receive or be entitled to receive from the Pacific Car and Foundry Company by reason of said contract as set forth in Exhibit "A" attached, exclusive of the minimum salary of $250.00 per month and rental income separately set forth in said contract.

Payments to be made within three (3) days after first party shall receive an accounting and settlement of his adjusted bonus compensation from the Pacific Car and Foundry Company for each respective calendar year or fractional period.

It is understood and agreed that the amount to be paid by first party to second party by reason of the aforesaid adjusted bonus compensation earned by first party subsequent to December 31, 1941, shall not exceed the difference (if any) between; (a) the amount theretofore paid or so much thereof not in excess of Seventy-five Hundred Dollars ($7,500.00), and (b) Seventy-five Hundred Dollars ($7,500.00).

In event any part or all of the machinery and equipment described in Exhibit "A" attached shall be sold by first party and his associate, one-fourth (¼) of the net proceeds derived from said sale shall be [89] thereupon paid to the second party and applied in liquidation of the aforesaid loan of $4,187.83. It is understood and agreed that one-half (½) of all other payments made by first party to second party pursuant to this agreement are to be applied in liquidation of said loan until it shall be paid in full.

In event first party shall terminate his employment with the Pacific Car and Foundry Company, Motor Coach Division, either voluntary or by reason of death, the unpaid balance, if any, of said loan shall become immediately due and payable; however, said first party, his heirs, assigns, or legal representatives, shall have the option to assign an undivided one-fourth (¼) interest in the machinery and equipment described in Exhibit "A" attached together with the proportionate share of rental income to be subsequently earned, to said second party, his heirs, assigns or legal representatives,

in full satisfaction of the unpaid balance then due on said loan. Said option shall become null and void if not exercised within thirty days after the termination of employment by first party or within such extended period as may be granted by second party.

In event said first party shall continue in the employ of the Pacific Car and Foundry Company, Motor Coach Division, for the full term of seven and one-half (7½) years from October 1, 1938, and shall fully perform all of the covenants set forth herein, the second party hereby agrees to waive, cancel, and forgive any unpaid balance of the aforesaid loan in the amount of $4,187.83.

In Witness Whereof the parties have hereunto subscribed their names, in duplicate, at Seattle, Washington, this day and year first above written.

ROBERT L. NEWELL
First Party.
GEO. W. YOST
Second Party.

In Presence of:
PAUL R. STROUT

Exhibit "A" attached is Agreement, dated August 3, 1938, by and between Pacific Car and Foundry Company, a Washington corporation, First Party; Robert L. Newell and Richard B. Newell, Second Parties; Tricoach Corporation, a Washington corporation, Third Party; and George Yost, Fourth Party. [91]

EXHIBIT NO. 9

(Copy)

This Agreement entered into at Seattle, Washington, this 3rd day of August 1938, by and between Richard B. Newell, of Seattle, Washington, hereinafter designated first party, and George W. Yost, of Edmonds, Washington, hereinafter designated second party, Witnesseth:

In Consideration that the second party shall consent to and enter into a certain contract between the Pacific Car and Foundry Company, a corporation, the Tricoach Corporation, a corporation, et al, copy of which is attached hereto and marked "Exhibit A," and shall, on before December 31, 1938, advance to first party the sum of Forty-one Hundred Eighty-seven 83/100 ($4,187.83) Dollars, without interest, to be used by first party for the purpose of acquiring joint ownership of the machinery and equipment to be sub-leased to the Pacific Car and Foundry Company as set forth in Exhibit "A" attached, the first party hereby agrees to pay unto second party an amount equivalent to:—

> one-third (1/3) of all compensation, or damages in lieu thereof, not in excess of Thirty-seven Thousand Five Hundred Dollars ($37,500.00), said first party shall receive or be entitled to receive from the Pacific Car and Foundry Company by reason of said contract as set forth in Exhibit "A" attached, exclusive of the minimum salary of $250.00 per month

and rental income separately set forth in said contract.

Payments to be made within three (3) days after first party shall receive an accounting and settlement of his adjusted bonus compensation from the Pacific Car and Foundry Company for each respective calendar year or fractional period.

It is understood and agreed that the amount to be paid by first party to second party by reason of the aforesaid adjusted bonus compensation earned by first party subsequent to December 31, 1941, shall not exceed the difference (if any) between; (a) the amount theretofore paid or so much thereof not in excess of Seventy-five Hundred Dollars ($7,500.00), and (b) Seventy-five Hundred Dollars ($7.500.00).

In event any part or all of the machinery and equipment described in Exhibit "A" attached shall be sold by first party and his associate, one-fourth (¼) of the net proceeds derived from said sale shall be [92] thereupon paid to the second party and applied in liquidation of the aforesaid loan of $4,187.83. It is understood and agreed that one-half (½) of all other payments made by first party to second party pursuant to this agreement are to be applied in liquidation of said loan until it shall be paid in full.

In event first party shall terminate his employment with the Pacific Car and Foundry Company, Motor Coach Division, either voluntary or by reason of death, the unpaid balance, if any, of said loan

shall become immediately due and payable; however, said first party, his heirs, assigns, or legal representatives, shall have the option to assign an undivided one-fourth (¼) interest in the machinery and equipment described in Exhibit "A" attached together with the proportionate share of rental income to be subsequently earned, to said second party, his heirs, assigns or legal representatives, in full satisfaction of the unpaid balance then due on said loan. Said option shall become null and void if not exercised within thirty days after the termination of employment by first party or within such extended period as may be granted by second party.

In event said first party shall continue in the employ of the Pacific Car and Foundry Company, Motor Coach Division, for the full term of seven and one-half (½) years from October 1, 1938, and shall fully perform all of the covenants set forth herein, the second party hereby agrees to waive, cancel, and forgive any unpaid balance of the aforesaid loan in the amount of $4,187.83.

In Witness Whereof the parties have hereunto subscribed their names, in duplicate, at Seattle, Washington, this day and year first above written.

RICHARD B. NEWELL
First Party.
GEO. W. YOST
Second Party.

In Presence of:

PAUL R. STROUT

Exhibit "A" attached is Agreement, dated August 3, 1938, by and between Pacific Car and Foundry Company, a Washington corporation, First Party; Robert L. Newell and Richard B. Newell, Second parties; Tricoach Corporation, a Washington corporation, Third Party; and George Yost, Fourth Party. [94]

EXHIBIT NO. 10

(Copy)

RECORD OF MINUTES, SPECIAL JOINT MEETING OF STOCKHOLDERS AND DIRECTORS

Pursuant to call of the president, the stockholders and directors of the Tricoach Corporation assembled in special joint session at the office of the corporation at 7:00 P. M., on August 2, 1938.

All stockholders and directors were present.

The president stated the meeting had been called for the purpose of taking formal action in regard to moving the corporation's place of business elsewhere or suspending operations; the matter having been under consideration for several weeks.

After lengthy discussion the following resolution was introduced and unanimously adopted:

"Whereas; the headquarters building of the Tricoach corporation, at 703 Sixth Avenue North, Seattle, Washington, has been inadequate to properly house the corporation's manufacturing activities, it being necessary to rent additional space in other buildings in order to relieve the overcrowded

conditions; insufficient space in which to place tools and equipment, work under construction, and for employees to perform their respective duties, has caused general inefficiency in direct labor production and an unwarranted increase in overhead expenses in ratio to productive man hours; making continued occupancy of the present quarters unprofitable; and

"Whereas; the present general business conditions, labor unrest, excessive taxation, governmental, regulation and interference with manufacturing operations, etc., discourage the reestablishment of operations in another location; and

"Whereas; Robert L. Newell, and Richard B. Newell, who have heretofore been in active management of the corporation's affairs, have an opportunity to enter the employ of the Pacific Car and Foundry Co., Motor Coach Division, and receive greater compensation than can be expected from continued operation of the Tricoach Corporation; and have arranged with their prospective employer to use all manufacturing machinery and equipment on a rental basis and to bear all cost of removing same from its present location, and to purchase whatever materials and supplies as may be on hand October 1, 1938, at current market prices when required, so that no unusual expenses or losses may be incurred by Tricoach Corporation by reason of suspending operations;

Now Therefore Be It Resolved; that the Tricoach Corporation suspend manufacturing operations on

or about October 1, 1938, and that the officers of the corporation be hereby authorized; [95]

(1). To gradually liquidate its affairs; and

(2). To enter into an agreement with the Pacific Car and Foundry Co., in consideration that they remove the manufacturing machinery and equipment from the premises where now in operation, and purchase materials and supplies at current market prices when required, to refrain from re-establishing manufacturing and selling operations in competition with their products in the states of Washington, Oregon, Montana, and Idaho, for a period not in excess of ten years; and

(3). To enter into a lease agreement with Richard B. Newell and Robert L. Newell, for use of the corporation's manufacturing machinery and equipment for not to exceed a ten year period, at a rental rate of $100.00 per month; said lease to contain an option whereby the machinery and equipment may be purchased by Messrs: Richard B. Newell and Robert L. Newell for a cash consideration equivalent to its book value (cost minus accrued depreciation) if exercised on or before December 31, 1938, in which case any rental paid during the interim period shall be applied in payment of the purchase price of said machinery and equipment."

Upon motion duly made and seconded, an agreement dated August 2, 1938, signed by all the stockholders of Tricoach Corporation, restricting the sale and transfer of shares of capital stock to per-

sons other than the present stockholders and members of their respective families, was received and ordered filed as an appendix to these minutes.

Upon motion, meeting adjourned.

GEO. W. YOST,
Sec'y. [96]

(Copy)

AGREEMENT

This Agreement entered into at Seattle, Washington, this 2 day of Aug. 1938, by and between Richard B. Newell, Robert L. Newell, and George W. Yost, Witnesseth:

Whereas, said parties to this agreement now own and control all of the capital stock of the Tricoach Corporation, a Washington corporation, and it is of mutual interest that the control of said capital stock does not transfer to any person or persons unfriendly to the remaining stockholders, which action might diminish the value of the capital stock retained by the present stockholders;

Now Therefore, in consideration of the mutual benefits to each party to this agreement, each party covenants with the other parties that he, or his heirs, assigns, and successors, will not sell or assign his capital stock in the Tricoach Corporation or any part thereof, to any person or persons other than his wife or children, or to any firm or corporation, without first giving notice in writing to all other stockholders; such notice to contain the name of the proposed assignee, the number of

shares to be transferred, the price per share, and the terms of sale, and shall stipulate that such other stockholders, individually or collectively, may, within ten days from the date such notice is received, Sundays and holidays excluded, purchase said shares at the same price and upon the same terms set forth in such notice.

In Witness Whereof, the names of the respective parties are subscribed hereunder, in triplicate, at Seattle, Washington, the day and year first above written.

GEO. W. YOST
RICHARD B. NEWELL
ROBERT L. NEWELL

In presence of:
PAUL R. STROUT.

(Copy)

Seattle, Washington, June 26, 1940.

Tricoach Corporation,
Seattle, Washington.

Greetings:

Please pay to Tricoach Sales Co., the sum of Fifty Thousand Dollars ($50,000.00) and charge the accounts of the undersigned in the following manner:

Richard B. Newell (24½%) $12,250.00
Robert L. Newell (24½%) 12,250.00
Geo. W. Yost (49%) 25,500.00

Respectfully,
ROBERT L. NEWELL
RICHARD B. NEWELL
GEO. W. YOST

(Copy)

RECEIPT

Seattle, Wash., June 26, 1940.

Received of Tricoach Corporation, the sum of $25,500.00 Twenty-five thousand five hundred dollars; same being an amount equivalent to the par value of all the capital stock in asid corporation owned by the undersigned. In event the Tricoach Corporation shall resume its business activities the undersigned hereby agrees to return the funds thus advanced; but, if business activities are not resumed, the funds thus advanced shall, upon dissolution, be applied in settlement of any liquidating dividends that may be declared.

GEO. W. YOST

Witness:

.....

Certificate number	Number of shares
.....	.....
.....	.....
.....	.....

(Copy)

RECEIPT

Seattle, Wash., June 26, 1940

Received of Tricoach Corporation, the sum of $12,250.00 Twelve thousand two hundred fifty dollars; same being an amount equivalent to the par value of all the capital stock in said corporation owned by the undersigned. In event the Tricoach Corporation shall resume its business activities the undersigned hereby agrees to return the funds thus advanced; but, if business activities are not resumed, the funds thus advanced shall, upon dissolution, be applied in settlement of any liquidating dividends that may be declared.

ROBERT L. NEWELL

Witness:

.....

Certificate number	Number of shares
.....	.....
.....	.....
.....	.....

(Copy)

RECEIPT

Seattle, Wash., June 26, 1940

Received of Tricoach Corporation, the sum of $12,250.00 Twelve thousand two hundred fifty dollars; same being an amount equivalent to the par value of all the capital stock in said corporation owned by the undersigned. In event the Tricoach Corporation shall resume its business activities the undersigned hereby agrees to return the funds thus advanced; but, if business activities are not resumed, the funds thus advanced shall, upon dissolution, be applied in settlement of any liquidating dividends that may be declared.

RICHARD B. NEWELL

Witness:

.....

Certificate number	Number of shares
.....	.....
.....	.....
.....	.....

Before the Tax Court of the United States

Docket Nos. 4969 and 4970.

In the Matter of:

GEORGE W. YOST AND JUANITA YOST,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Customs Court Room,
Federal Office Building,
Seattle, Washington,

November 2, 1944—9:30 a. m.

(Met pursuant to notice)

Before: Arthur J. Mellott, Judge.

Appearances:

Alfred J. Schweppe, Esq., and Maurice R. McMicken, Esq., 657 Colman Building, Seattle, Washington, appearing on behalf of the Petitioner.

W. H. Payne, Esq., appearing on behalf of the Commissioner of Internal Revenue, Respondent.

PROCEEDINGS

The Court: We will call Dockets 4969 and 4970, George W. Yost and Juanita Yost.

You may state your appearances for the record?

Mr. Schweppe: Alfred J. Schweppe, Seattle, Washington, and Maurice McMicken, Seattle, Washington.

Mr. Payne: W. H. Payne for the Respondent.

The Court: You may state your case for the Petitioners.

OPENING STATEMENT ON BEHALF OF THE PETITIONERS

By Mr. Schweppe.

Mr. Schweppe: May it please the Court, the facts in this case are virtually all stipulated. There will be some testimony that will be offered to prove certain facts. I have here a stipulation which consolidates these cases, because of the fact that they involve the identical problem, and also the stipulation of facts, with leave, however, to introduce the best evidence, whatever it is. I offer at this time the stipulation, and I have copies of the stipulation which have been signed by both counsel for the Respondent and for the Petitioners.

The Court: The stipulation may be filed, and will constitute a part of the record.

Mr. Schweppe: I also have here the tax returns for the years 1940 and 1941 for George W. Yost, the husband, which I offer at this time, it being agreed with counsel for [105] the Respondent that those tax returns, for the purpose of shortening the record, are identical with those of the wife, Mrs. Yost, so far as this record is concerned.

Mr. Payne: We agree to the stipulation, and that they may be offered.

The Court: The stipulations may be offered as joint exhibits A-1 and B-2.

(The documents referred to were marked and received as joint Exhibits A-1 and B-2.)

[Printer's Note]: Exhibits A-1 and B-2 set out in full at pages 152 to 160, inclusive.

Mr. Payne: Let the record show that they are the original returns from the Respondent's files, and are to be returned to the Respondent at the conclusion of the case.

The Court: The record may so show.

Mr. Payne: With liberty to furnish photostatic copies, if desired.

Mr. Schweppe: We do not wish to offer a great deal of evidence, in view of the stipulation; however, we wish to offer a small amount of testimony, and to that end, so that the Court may follow it, I will make a very brief statement.

The problem involved is whether or not certain money received by George W. Yost,—and I will endeavor to refer to him as the taxpayer,—in 1940 and 1941 constituted a long-term capital gain, so that only 50 per cent would be [106] taken account of in computing the income tax returns, or whether it is, as contended by the Respondent, ordinary income. The total amount involved is approximately $2,300. In order to acquaint the Court with the situation out of which this problem arose, I will say merely that between the years 1935 and 1938 the taxpayer, George Yost, and two men known as the Newell brothers owned a corporation in the State of Washington known as the Tri-Coach Corporation. They were engaged in the manufacture

of auto busses, and that business under their management was a profitable one, as the stipulation of facts shows; Mr. Yost was the financier, and furnished capital to the Newell brothers who were experts in the field, one in auto bus construction and design, and the other in sales.

In 1938 there was another concern in Seattle also engaged in that business, the Pacific Car and Foundry Company. They had taken over the assets of a previously defunct concern engaged in that business and for a period of time their operations had not been very successful. In 1938,—during the early part of the year,—the Pacific Car and Foundry Company executives approached Mr. Yost and the Newell brothers with a view of determining whether or not an arrangement could not be made either for the consolidation of the Tri-Coach Motor business with their own, or for the purpose of taking it over. These negotiations lasted for [107] several months. Mr. Yost participated in the beginning, but after that the negotiations were participated in by the Newell brothers. I think it will be borne out by the testimony that that was almost always the case.

The Pacific Car and Foundry Company were interested in getting the services of the Newell brothers, one who was the expert in design and construction, and the other who was the expert in sales; they were not interested in getting the services of Mr. Yost. At that time, in August 1938, three contracts were executed, which are a part of the stipulation; the first contract, which is Exhibit

No. 7, was a four-party agreement between the Pacific Car and Foundry Company, as a party of the first part, the two Newell brothers as parties of the second part, the Tri-Coach Motor Corporation as a party of the third part, and George Yost, the taxpayer, as a party of the fourth part. Pursuant to the terms of that agreement, the transaction finally took place, having in mind that the Tri-Coach Corporation was going to go out of business. The Tri-Coach Corporation gave an option of all its physical property and assets to the Newell brothers who, in turn, leased these physical assets to the Pacific Car and Foundry Company. The agreement contemplated that the Newell brothers were to go over to the Pacific Car and Foundry Company, Motor Coach Division, for a period of seven and one-half years, and they were to receive a stipulated compensation, plus six per cent of the profits of the Motor Coach Division; and the Tri-Coach Corporation was to go out of business.

At the time this transaction was made in August 1938, the Tri-Coach Corporation was a very profitable business. The percentage of return on the capital investment was very large. They had made a large profit in 1936, 1937, and in the year 1938 up to the time this transaction took place.

In order to get Mr. Yost to step out of this profitable business and to get him to consent to it, which was an essential part of the agreement upon which the Pacific Car and Foundry Company insisted, Mr. Yost being a 51 per cent stockholder of the Tri-Coach Corporation whose assets were being

transferred under the arrangement I have recited, —in order to get his consent, the two Newell brothers each made a separate contract with Mr. Yost, which are Exhibits 8 and 9 attached to the stipulation, in which they agreed, in consideration of his consent to deal with the Pacific Car and Foundry Company, which contemplated the Tri-Coach Corporation going out of business, they would pay him a certain sum of money. Now, that sum of money was set up in Exhibits 8 and 9 as one-third of the amount, not exceeding, however, $8,000 and a few hundred dollars in each case which they would receive out of their one-sixth share of the profits that they were to receive individually in excess of the $250 a [109] month out of the profits of the Pacific Car and Foundry Company. In other words, at the time Mr. Yost agreed with the Newell brothers that, for making the agreement, he was to have additional compensation for his interest in the Tri-Coach Corporation other than that which he would get on liquidation of its assets.

This agreement was subsequently carried out. The Tri-Coach Corporation was liquidated, and liquidating dividends were paid to the stockholders. Mr. Yost, the 51 per cent stockholder, received $25,500; that is, the Corporation actually liquidated its physical assets which approximated the value of the capital stock. And in addition to that, Mr. Yost, in the years 1940 and 1941 received from the two Newell brothers additional compensation which was payable to him under Exhibits 8 and 9.

When the taxpayer made his return for the year

in question he took the position, and the testimony will show, that the taxpayer himself prepared the returns; he took the position that the monies paid to him by the Newell brothers in the years 1940 and 1941 under the terms of Exhibits 8 and 9 were a capital gain, that it was compensation to him for his interest in the Tri-Coach Corporation over and above what he got in the liquidation of the physical assets, which was merely a return of his capital. Having in mind that the business was a profitable one, and had brought a large return on [110] the capital prior to the time of the making of this transaction with the Pacific Car and Foundry Company.

So the problem is whether or not the money received in 1940 and 1941 from the Newell brothers which, under the terms of Exhibits 8 and 9, was paid to Yost as compensation to cause him to step aside or step out of his profitable business in the Tri-Coach Corporation in order to make this transaction with the Pacific Car and Foundry Company, —whether or not that is a long-term capital gain, as the taxpayer construed it when he made his return, or whether it is an income taxable in full. The taxpayer construed it to be a capital gain to him, or, rather, a payment to him of additional compensation for his share in the corporate enterprise. That is, goodwill or going-concern value over and above what he actually got on liquidating the assets, which amounted to nothing more than a return of the capital.

Now, the facts, as I say, are virtually all stipu-

lated. There are one or two matters which we would like to have clarified by calling Mr. Yost and Mr. Newell and Mr. Strout, but their testimony will be very brief.

The Court: Do you desire to state your case, Mr. Payne?

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. Payne.

Mr. Payne: I have a very short statement, Your [111] Honor. We have entered into a rather elaborate stipulation of facts, and have a good many exhibits, agreements and contracts attached thereto which rather fully explain the relationship between these two parties and the related transactions as to which Mr. Schweppe has referred. Boil it down, it resolves itself into a simple question of whether the amounts of the net profits which the two Newell brothers were entitled to receive and did receive from the Pacific Car and Foundry Company under the contract with them relating to their employment is ordinary income to Mr. Yost or is taxable at capital gain rates.

Now, the two contracts referred to, one, the four-party contract between the Tri-Coach Corporation, the Pacific Car and Foundry Company, the two Newell brothers, and Mr. Yost, and the contract between Mr. Yost and the two Newell brothers, were apparently negotiated simultaneously and were executed at the same time. We believe those agreements themselves are rather clear with respect

to their relationships and with respect to the properties transferred. We do not agree with the conclusion which Mr. Schweppe draws in his opening statement as to the inferences to be drawn from the contract between Mr. Yost and the two Newell brothers that that was purely additional compensation or additional consideration to him for goodwill values which existed in the Tri-Coach Corporation. As a matter of fact, the evidence [112] shows that Mr. Yost did not sell or exchange any property to the Pacific Car and Foundry Company, and neither did he sell or exchange any properties to the Newell brothers. The first contract was a sale of property by the Tri-Coach Corporation to the Pacific Car and Foundry Company, pure and simple, so far as Mr. Yost is concerned, and so far as the Tri-Coach Corporation is concerned it did carry with it an employment contract with respect to the Newell brothers.

Now, the two Newell brothers entered into a lease agreement to take over certain of the physical assets from the Tri-Coach Corporation, with an option to purchase those assets. Their contract with Mr. Yost obviously contemplated two things, that Mr. Yost would go along with the first contract with respect to the arrangement between Tri-Coach Corporation and the Pacific Car and Foundry Company to sell its assets to the Pacific Car and Foundry Company, and thereby, in effect, terminated the business of the Tri-Coach Corporation, which ceased to further compete in that type of work, and Mr. Yost ceased to compete either indi-

vidually or as a part of the Tri-Coach Corporation, with the Pacific Car and Foundry Company's business which it thereafter contemplated conducting.

Now, Mr. Yost's agreement with the two Newell brothers also contemplated a further item, which we think is of importance, and is found in Exhibits 8 and 9, respectively. [113] There were separate contracts entered into with each of the two Newell brothers, which are identical in terms and amounts. That fact which we think is of importance is this, that Mr. Yost agreed that he would loan or advance, —the word "advance" is used in the agreement,— the sum of $4,187.83, which was to be used by them to acquire certain machinery and equipment and facilities from the Tri-Coach Corporation which, as Mr. Schweppe has said, were, in turn, to be leased to the Pacific Car and Foundry Company by the two Newell brothers. Mr. Yost did advance that money, and our interpretation of that contract is apparently different than that of counsel for the Petitioners. We say that was, in effect, a separate venture on the part of Mr. Yost, that in the advancing of this money he was not to get it back at all events, but he was to get it back only if profits were returned, and a formula was set up in the contract by which that was to be accomplished. However, if they had continued to operate under the big contract for the period of seven and one-half years, which they were bound to do under the terms of the contract,—I am speaking of the Newell brothers,—and were unable to pay

the advances made by Mr. Yost back to him, then they were never to pay; and we say that was a part of a capital venture of Mr. Yost with the Newell brothers, and we say that the proceeds are in the nature of a joint venture income and are subject to normal rates and not as for the sale and exchange of capital assets. [114]

The Court: Call your first witness.

Whereupon,

GEORGE W. YOST,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schweppe:

Q. You are George W. Yost, the taxpayer in this case? A. Yes.

Q. And Juanita Yost, the other taxpayer, is your wife? A. That is correct.

Q. When, Mr. Yost, according to your best recollection, did the negotiations with the Pacific Car and Foundry Company commence?

A. In the early spring of 1938, to the best of my recollection.

Q. What part did you have in those negotiations?

A. I was present at one meeting in the White Building where the offices of the Pacific Car and

(Testimony of George W. Yost.)

Foundry Company are in Seattle, at which,—I don't know what Mr. Piggott's title is with the Company,—anyway he is the head of the Company,—was present, and the two Newell brothers, our accountant, Mr. Strout, and myself. It was sort of a tentative [115] conference looking forward to some manner of consolidating two companies. There were numerous propositions pro and con, but nothing resulted. We might say nothing was arrived at on any of those proposals at that meeting.

Q. At that conference was any statement made by you or by the Newell brothers as to the value of the stock in the Tri-Coach Corporation in the event that stock should be sold?

A. Yes. The par value of the stock being $50,000, we considered at that time it was worth $100,000.

Q. Did you so state in that conference?

A. Yes.

Q. From that time on, who was in charge of the negotiations with the Pacific Car and Foundry Company, so far as you were concerned?

A. Well, I didn't enter into the picture of any more negotiations until later on, and that is, I had nothing to do with the Pacific Car and Foundry Company, and the later negotiations were all between the Newell Brothers and the Pacific Car and Foundry Company. It seemed that the Pacific Car and Foundry Company were desirous of obtaining primarily the services of the two Newell brothers.

Q. Why was that?

(Testimony of George W. Yost.)

A. Because of their knowledge of the business, they being practical business men for the furtherance of motor coach construction and sales. Mr. Dick Newell being the [116] engineer and designer, and his brother, Robert Newell, being the salesman, having had many years of experience in that special line.

Q. Did the Pacific Car and Foundry Company make any effort to get you to come over to their organization?

A. No; everything was the reverse. They didn't have any use for me in their business.

Q. Coming now to the time approximately of the agreements of August 3, 1938. Prior to the execution of those agreements did you have any conferences with the Newell brothers relative to the liquidation of the Tri-Coach Corporation in connection with the contemplated transaction with the Pacific Car and Foundry Company?

A. Yes. The Newell brothers kept me advised of their negotiations with the Pacific Car and Foundry Company at all times after that first conference that I related, and then the whole thing as, so far as I was concerned,—the negotiations had this thought in mind, that the Newell brothers were to try to find out how we could get together on some sort of agreement which would permit them to take up their proposition with the Pacific Car and Foundry Company and to get me to step out of the picture.

(Testimony of George W. Yost.)

Q. Now, there are stipulated a number of instruments, including the three agreements, Exhibits 7, 8 and 9. Exhibits 7, 8 and 9 are all executed on August 3, 1938, Exhibit [117] 7 being a four-party agreement, and Exhibits 8 and 9 being identical instruments, but separate, private contracts, between you and the Newell Brothers. Were these instruments, according to your best recollection, executed on the same day?

A. Yes, that is correct, as of the same date. The two later ones may have been executed a few days later, but they were made as of the same date.

Q. Now, referring to Exhibits 7 and 8, with which I think you are thoroughly familiar,—Exhibits 8 and 9, I mean,—will you state the reason, on the basis of that discussion, that additional consideration or compensation set forth in those agreements was to be paid to you?

A. To put it simply, it was just compensation over and above my interest in the Tri-Coach Corporation to get me to step out of the business. It was just additional consideration, because the Company had been doing a very profitable business, and certainly I would not step out for just my equity in the assets of the Tri-Coach Corporation.

Q. What did your equity at that time amount to?

A. Well, it was 51 per cent of the stock. You mean at the time of the final liquidation,—it was merely the par value of the stock.

Q. Well, interjecting that parenthetically to

(Testimony of George W. Yost.)

complete the picture, what did you get on the liquidation of the Company [118] A. $25,500.

Q. What was that in relation to your actual investment?

A. That was the same as my actual investment.

Q. Would you have entered into Exhibits 8 and 9, executed on August 3, 1938, except for the additional consideration provided in those agreements?

A. Certainly not.

Q. Were you prepared to step out of the Tri-Coach Corporation merely on the basis of getting your original capital back at that time?

A. I was not.

Q. I note in examining Exhibit 7, which is the four-party agreement, that it was expressly provided that you might continue to operate the Yost Auto Company. What is the Yost Auto Company?

A. That is an automobile agency located in Edmonds, Washington, and has been there for many years, of which I am a substantial stockholder, selling Ford products primarily, and doing a general garage business.

Q. How long has that Company been in operation? A. Oh, since 1913.

Q. I have just a couple of more questions. Exhibit 7, as I stated, is the four-party agreement. Would you [119] have signed Exhibit 7 if it had not been for the additional consideration provided to be paid to you in Exhibits 8 and 9?

A. I certainly would not.

Q. One final question: Your income tax returns

(Testimony of George W. Yost.)

for the years 1940 and 1941 have been admitted in evidence. Will you state for the record who prepared those returns? A. I prepared them.

Q. Individually? A. Yes.

Q. As a matter of fact, you have been preparing your own income tax returns for a good many years?

A. Ever since the income tax started.

Q. And therefore, what you said in the returns for 1940 and 1941 was your construction of that transaction at the time it was entered into?

A. That's correct.

Mr. Schweppe: You may cross examine.

Cross Examination

By Mr. Payne:

Q. Mr. Yost, what is the present status of the Tri-Coach Corporation?

A. It is in existence in name only. There are no assets or liabilities, and there were a couple of reasons why we saw fit to continue to pay the state corporation license, which costs only $15 per year, in order to keep [120] the Corporation alive in the event we would want to use it for some other purpose. I have done that for no other reason. It is cheaper than to create a new corporation, if we merely keep it alive. It was entirely liquidated.

Q. You had another organization, Mr. Yost, the Tri-Coach Sales Company, which you covered in the stipulation. Will you just state for the record what that organization consisted of?

(Testimony of George W. Yost.)

A. That is a partnership consisting of Newell brothers and myself, and it is still in existence. That was the sales organization. The Tri-Coach Corporation was the manufacturing company of these busses, and the Tri-Coach Sales Company, a partnership, was the selling organization.

Q. It was organized about when, the partnership? A. The partnership?

Mr. Schweppe: This stipulation shows 1937.

A. Yes, 1937.

Q. (By Mr. Payne—continuing): It was in existence at the time of the four-party agreement?

A. That is correct.

Q. And it is still in existence? A. Yes.

Q. And it has continued to operate throughout the years?

A. Just in a minor way; we are doing a little financing [121] with it; not any sales business any more.

Q. Now, when you received the $25,500, as to which you testified on direct examination in connection with your stock in the Tri-Coach Corporation, what did you do with that money?

A. Well, my recollection is that that was transferred into the Sales Company,—most of it.

Q. And the two Newell brothers did the same with the proceeds that they received?

A. I believe that is right; we all did the same thing, yes.

Q. Mr. Yost, are you familiar with Exhibit 11, the stipulation of facts?

(Testimony of George W. Yost.)

A. Just in a general way; I read it over casually.

Q. In other words, you acknowledge receipt of that money and the turning of it over to the partnership, and that contemplated that eventually you might throw it back into the corporation, did it not?

A. Well, it could have been, I suppose, construed as such, yes.

Q. You had in mind all the time, did you not, that this seven and one-half year contract that the Pacific Car and Foundry Company had with the Newell brothers might be terminated, and you might get back in the same business and conduct the corporation as you formerly had done? [122]

A. That was a possibility; that was considered rather remote, but it was a provision for protection, by allowing the transaction to be consummated over a period of time rather than cash on the line.

Q. And you specifically contemplated when you turned the proceeds over to the partnership, and so specified in your paper turning the proceeds into the partnership?

A. We did not consider it as of such consequence, it was merely an easy way of clearing out the corporation and putting it into the partnership. That was the primary motive there.

Q. You stated that the Pacific Car and Foundry Company was interested in the Newell Brothers? A. That's right.

(Testimony of George W. Yost.)

Q. Was that because of their technical knowledge and ability?

A. That is correct; not only their knowledge, but their long experience in this area, which gave them, you might say, an advantage in making sales to customers. They knew the customers in this area and had a very close contact with them.

Q. And they had been conducting those activities for the Tri-Coach Corporation in former years? A. Yes.

Q. And you stated that the Pacific Car and Foundry [123] Company was not interested in obtaining your services because, as I understand it, you were representing the financial end of the management of the Tri-Coach Corporation?

A. That is correct.

Q. And they didn't need any assistance on that?

A. That is correct.

Q. At least, they thought they didn't?

A. That's right.

Q. Now, Mr. Yost, you controlled the Tri-Coach Corporation, as I understand it?

A. That's right.

Q. And you could have, therefore, controlled what the Corporation did with respect to its properties, could you not? A. That's right.

Q. You did not control the two Newell Brothers personally? A. That's right.

Q. They could have done what they pleased with respect to their own services, could they not? A. Yes.

(Testimony of George W. Yost.)

Q. And you were confronted with the possibility of losing their services to the Tri-Coach Corporation, were you not?

A. No, I would not, because we had absolute confidence [124] between the three of us at all times, and still have and to exemplify that, I might say, that our bank account is such that either one of us can draw on it without the knowledge of the other; we have just full confidence in the others, each of us. They had the confidence in me to the extent that they knew, and still know I would not do anything that would be injurious to them, and neither would they do anything that would injure my interests.

Q. But the Tri-Coach Corporation could not tie up their services? A. That is correct.

Q. Now, Mr. Yost, coming back to Exhibits 8 and 9, as to which you testified. There were also other considerations to that contract, were there not? A. I don't recall.

Q. Mr. Yost, you testified you would not have executed these agreements, 8 and 9,—strike that. You testified that you would not have executed the four-party agreement if you had not also obtained the agreements with the Newell brothers. Exhibits 8 and 9?

A. That is correct.

Q. And in order to get the agreements with the Newell brothers, 8 and 9, you also had to do something further, did you not?

A. I really don't know what you are driving at.

Q. You had to advance some money?

(Testimony of George W. Yost.)

A. That was the means of disposing of the machinery. That was just as incidental transaction to the whole thing.

Q. What do you mean, disposing of the machinery?

A. To get the Tri-Coach Corporation, to get rid of it, to absolutely liquidate the Tri-Coach Corporation.

Q. The Newell brothers did not have the capital to acquire the property, that is, to buy the machinery, and you supplied a part of the money to do so? A. That's right.

Q. And they used that money to obtain the machinery and equipment from Tri-Coach.

A. That's correct.

Mr. Payne: That's all.

Redirect Examination

By Mr. Schweppe:

Q. Just one other question. When the Tri-Coach Corporation was originally organized, who put up the great bulk of the money?

A. I put up $7,500, and the Newell brothers put up $250 each. That gives you the complete picture there at the start.

Mr. Schweppe: That's all.

Mr. Payne: Nothing further.

The Court: You may be excused. [126]

(Witness excused.)

Mr. Schweppe: Mr. Newell.

Whereupon,

ROBERT L. NEWELL,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schweppe:

Q. Will you give us your full name?

A. Robert L. Newell.

Q. You are one of the Newell brothers referred to in the certain agreement dated August 3, 1938, to which the Pacific Car and Foundry Company, Robert L. Newell, Richard B. Newell, the Tri-Coach Corporation, and George Yost were parties?

A. Yes.

Q. And you are also the Robert L. Newell, on the same date, who made a contract with George Yost, the taxpayer here? A. Yes.

Q. Which agreement is also one of the exhibits. Will you state, Mr. Newell, why you and your brother executed these two agreements, Exhibits 8 and 9, with Mr. George Yost? [127]

Mr. Payne: Now, if Your Honor please,——

Mr. Schweppe: Well, I think that is an improper way to state the question; I agree with you.

Q. (By Mr. Schweppe, continuing): Will you state what the discussions were with Mr. Yost, with yourself and your brother, as respects the consideration to be paid to him at the time you people

(Testimony of Robert L. Newell.)

entered into the deal with the Pacific Car and Foundry Company?

A. Well, we had arrived at a suitable agreement, we thought, with the Pacific Car and Foundry Company, and it was necessary for us to clear ourselves, you might say, with Mr. Yost. So, after we had arrived at this agreement with the Pacific Car and Foundry Company, we had a meeting with Mr. Yost and Mr. Strout, and tried to estimate the value of the Tri-Coach Corporation, the Sales Company, and then take into account the value so far as the physical assets and value of the going business was concerned. And our figures, were arrived at; we thought Mr. Yost was very fair to us all the way through, and we put down $50,000 for the physical value of the Company, and put $5,000 down for the value of the going business, and with that thought in mind we arrived at a figure to give him the difference between the two of us, $25,000, as he owned 50 per cent of the Company,—the $25,000 being the value of the going business.

Mr. Payne: Well, if Your Honor please, I have [128] been rather lenient. I was willing to have him tell the background, but this answer is entirely outside of the scope of the inquiry. It is not competent as to the value of the intangibles.

The Court: Is the testimony being relied upon to prove the value of the intangibles?

Mr. Schweppe: Not to prove specifically the value, but to prove that the intangibles did have value, yes.

(Testimony of Robert L. Newell.)

The Court: Well, I will sustain the objection at this time.

Mr. Payne: I move that that part of the answer with respect to value be stricken as not responsive to the question. The question was, what was his conversation with Mr. Yost, and I move to strike the value part of the answer as not responsive.

The Court: Well, we will let it stand, not as any proof of value, but as a mere statement of what the conversation was.

Q. (By Mr. Schweppe, continuing): Will you continue with the conversation that took place between you and Mr. Yost, leading up to the execution of the agreements which are Exhibits 8 and 9 in this case?

A. Well, Mr. Yost agreed with that amount that we fixed as the value for the business, and we entered into an agreement to pay him that. That is all there is to it. [129]

Q. Did Mr. Yost make any statement in your presence as to whether or not he would sign the agreement with the Pacific Car and Foundry Company unless he got additional consideration?

Mr. Payne: I object to that. I don't think it's material. The contracts were executed. I don't think that is material.

The Court: The objection is over-ruled.

Mr. Payne: Note an exception.

The Court: Exception noted.

A. Mr. Yost did not, because he never had to; he knew we would never make an agreement with

(Testimony of Robert L. Newell.)

the Pacific Car and Foundry Company without his consent.

Q. (By Mr. Scheppe, continuing): I will ask you this question: Was there ever any conversation between your brother and yourself and Mr. Yost at the time this negotiation took place, between the three of you, suggesting or intimating any consideration to him for staying out of business as against the Pacific Car and Foundry Company? A. No.

Mr. Payne: I'll object to that, if Your Honor please. The agreements also cover that specifically. In the four-party agreement, which is before Your Honor, Mr. Yost did agree to stay out of business personally. I object to that testimony. [130]

The Court: The question has been answered. We will let it stand.

Mr. Payne: Exception.

Mr. Schweppe: That is all.

Cross-Examination

By Mr. Payne:

Q. You testified on direct, Mr. Yost, that before entering into any contract with Pacific Car and Foundry Company it was necessary to clear yourself with Mr. Yost. What do you mean by that?

A. I mean that they,—rather, that we would have to get his agreement that we could do that; we had entered into business with Mr. Yost, and we were going to stay there until the agreement

(Testimony of Robert L. Newell.)

was made, or until he agreed that we could accept some other proposal.

Q. You and your brother owned 49 per cent of the stock of the Tri-Coach Corporation, did you not? A. That's right.

Q. You had no contract to give your personal services to that corporation, did you?

A. Only our word of honor.

Q. After your various negotiations with the Pacific Car and Foundry Company, and also with Mr. Yost, you finally reduced your understandings to writing, did you not? A. Yes. [131]

Q. And they are reflected in the agreements which are introduced in evidence?

A. Yes, I believe they are.

Mr. Payne: That is all.

Mr. Schweppe: That is all, Mr. Newell. Thank you very much for coming.

(Witness excused.)

Mr. Schweppe: Mr. Strout.

Whereupon,

PAUL R. STROUT,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

(Testimony of Paul R. Strout.)

Direct Examination

By Mr. Schweppe:

Q. Will you state your name for the record?

A. Paul R. Strout.

Q. Will you state your business or profession?

A. I am a certified public accountant.

Q. Are you acquainted with Mr. Yost and the Newell brothers? A. Yes.

Q. Will you state what connection you had in the year 1938 with the taxpayer, Mr. Yost, the Newell brothers, and the Tri-Coach Corporation?

A. I was employed by them as their accountant.

Q. And did you participate in any of the discussions or negotiations leading up to the transaction which is incorporated in certain agreements which are attached to this stipulation as exhibits 8 and 9?

A. I did.

Q. What was the first conference in which you participated?

A. It was a meeting held in the offices of the Pacific Car and Foundry Company in the White Building, Seattle, Washington, during the early summer or late spring of 1938.

Q. Do you recollect what negotiations took place there?

A. I had prepared three or four alternate plans for a merging and consolidating of the two companies, and submitted them for consideration.

Q. In the course of that conference, were any

(Testimony of Paul R. Strout.)

values stated by Mr. Yost or the Newell Brothers as to the stock in the Tri-Coach Corporation?

A. Yes.

Q. State what those values were that were then stated.

Mr. Payne: I object, Your Honor. I don't think the statement of the value is relevant.

The Court: Is the value in issue in this case, [133] gentlemen?

Mr. Schweppe: The value itself is not in issue, that is, the value in specific dollars and cents. It is the fact that there was a value placed on the stock of this Corporation over and above its mere liquidating value. That is the point I am trying to show.

The Court: The objection is overruled.

Mr. Payne: Note an exception.

The Court: An exception may be noted.

Q. (By Mr. Schweppe, continuing): Will you state what value was mentioned in that conference?

A. $100,000.

Q. What was the authorized capital of the Tri-Coach Corporation at that time, if you know?

A. $50,000.

Q. From your own knowledge, were the operations of the Tri-Coach Corporation at the time of these negotiations profitable or otherwise?

A. They were very profitable.

Q. Did you have occasion during the course of these negotiations to make any investigation of the operations of the Motor Coach Division of the Pacific Car and Foundry Company?

(Testimony of Paul R. Strout.)

A. I did.

Q. And what did that investigation show?

A. It showed that they had suffered substantial losses during two preceding years in which they had operated it.

Q. Do you know of your own knowledge from statements made in your presence whether the executives of the Pacific Car and Foundry Company were especially desirous of obtaining the services of the Newell brothers?

Mr. Payne: I'll object to that as incompetent.

Mr. Schweppe: I will withdraw that question. It is covered by the instruments, anyway; it is a matter of necessary inference.

Q. (By Mr. Schweppe, continuing): You were familiar with the winding up of the affairs of the Tri-Coach Corporation? A. Yes.

Q. When the affairs of that Company were ultimately liquidated, how much was repaid to the stockholders, if you know?

A. The full par value of the stock was distributed,—assets equivalent to the full par value were distributed to the stockholders.

Q. Approximately $50,000?

A. It was $50,000.

Q. Now, if you know, who prepared the agreements between the Newell brothers and Mr. Yost, which are attached to the stipulation of facts as Exhibits 8 and 9? [135]

A. I prepared those documents.

Q. Were you present at the conferences be-

(Testimony of Paul R. Strout.)

tween those three persons, which led up to the preparation of that agreement?

A. I attended the meeting, yes.

Q. Will you state what the,—when was that conference, incidentally, if you remember?

A. August 2, 1938.

Q. That was the day then before the execution of all three of the agreements?

A. Yes, sir.

Q. Will you state what procedure,—strike that. What transpired at that conference, very briefly?

A. In anticipation of this meeting I had prepared a drafting of a resolution to be adopted by the stockholders authorizing the execution of this agreement with the Pacific Car and Foundry Company, the four-party agreement, and the only question to be decided was the manner in which Mr. Yost would be compensated for the value of his stock over and above his share of the physical assets in the liquidation.

Q. And what was said with reference to it?

A. We discussed means of paying him the sum of $25,000 in addition to what he had received in liquidation of his stock, and the final conclusion was,——

Mr. Payne (Interposing): Now, if Your Honor please, [13] I will object. The final conclusions have been reduced to writing and put in evidence.

Mr. Schweppe: I am agreeable that that be stricken.

Q. (By Mr. Schweppe, continuing): These con-

(Testimony of Paul R. Strout.)

versations that you have just recited led up to the execution of Exhibits 8 and 9; is that correct?

A. Yes.

Q. In which there is set forth a plan of paying out the consideration or compensation to Mr. Yost?

A. Yes.

Q. For his consent to the execution of the Pacific Car and Foundry Company transaction?

A. That's correct.

Q. Is that correct? A. Yes.

Mr. Schweppe: You may examine.

Cross-Examination

By Mr. Payne:

Q. You stated there were various drafts, proposed drafts, prepared by you in connection with these related transactions?

A. Not between the Newell brothers and Mr. Yost, but three or four alternative propositions at this first meeting held with the Pacific Car and Foundry Company. [137]

Q. And these negotiations went on for a long period of time?

A. Some two or three months.

Q. And finally they were all boiled down to the agreements which are in evidence; is that correct?

A. That is correct.

Mr. Payne: That is all.

Mr. Schweppe: That is all, Mr. Strout. Thank you.

(Witness excused.)

Mr. Schweppe: The taxpayer rests.

Mr. Payne: The respondent has no evidence, Your Honor.

The Court: Very well. Do you gentlemen desire to submit the matter on briefs?

Mr. Payne: Yes, I would like the privilege.

The Court: 45 days from this date for the opening brief for the Petitioner; is that sufficient?

Mr. Schweppe: Yes; the point is quite simple.

The Court: And 30 days thereafter, is that sufficient for you, Mr. Payne?

Mr. Payne: Yes.

The Court: And 20 days for the filing of the reply brief, if you deem it advisable to file one. Thank you, very much, gentlemen. The proceedings stand submitted.

(Whereupon, at 10:30 a. m., November 2, 1944, hearing concluded.)

[Endorsed]: T.C.U.S. Filed Jan. 17, 1945. [138]

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

(Auditor's Stamp)

RECEIVED
AUDIT REVIEW DIVISION
By J. E. Stark
DATE MAY 20 1941

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning ....., 1940, and ended ....., 1941

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Geo. W. Yost
(Name) (Use given names of both husband and wife, if this is a joint return)

(Street and number, or rural route)

Edmonds (Post office) Snohomish (County) Wash. (State)

(Do not use these spaces)

File Code 804
Serial No. 200679
Dist. Washington
(Cashier's Stamp)
MAR 14 1941
TAX $ 122
P.P. $
BAL $
Cash Check M.O.
First Payment $

INCOME		
Salaries and other compensation for personal services. (From Schedule A)	$ 5,850 17	
Dividends	9,253 00	
Interest on bank deposits, notes, mortgages, etc.	1,269 07	
Interest on corporation bonds		
Taxable interest on Government obligations, etc. (From Schedule B)	31 50	
Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Furnish names and addresses): Tricoach Sales Co.	8 09	
Income from fiduciaries. (Furnish names and addresses):		
Rents and royalties. (From Schedule C)		
Income (or loss) from business or profession. (From Schedule D)		
(-) Net short-term gain from sale or exchange of capital assets. (From Schedule E)		
(-) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F) Gain	801 12	
(-) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
Other income (including income from annuities). (State below.) Separate Income of Geo. W. Yost - dividends	575 91	
Total income in items 1 to 11. (Enter nontaxable income in Schedule I)		$ 17,788 86
DEDUCTIONS		
Contributions paid. (Explain in Schedule H)	$ 35 00	
Interest. (Explain in Schedule H)		
Taxes. (Explain in Schedule H)	186 18	221 18
Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)		17,567 68
Bad debts. (Explain in Schedule H)		
Other deductions authorized by law. (Explain in Schedule H) Less: Juanita Yost portion		8,606 47
Total deductions in items 13 to 18		
Net income (item 12 minus item 19)		$ 8,961 21

THE TAX COURT OF THE U.S.
DIV. 11 DOCKET 4965-76
ADMITTED IN EVIDENCE
NOV 2 1944
PETITIONER'S EXHIBIT A-1
RESPONDENT'S

COMPUTATION OF TAX

Net income (item 20 above)		$ 8,961 21	28. Normal tax (4% of item 27)	$ 282 72
Less: Personal exemption. (From Schedule J-1)	$ 777 37		29. Surtax on item 24. (See Instruction 29)	163 03
Credit for dependents. (From Schedule J-2)	800 00	1,577 37	30. Total (item 28 plus item 29)	$ 445 75
Balance (surtax net income)		$ 7,383 84	31. Total income tax (from 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)	$ 445 75
Less: Interest on Government obligations, etc. (See Instruction 25)	$ 15 75		32. Less: Income tax paid at source	$
Earned income credit. (From Schedule K-1 or K-2)	300 00	315 75	33. Income tax paid to a foreign country or U. S. possession. (Attach Form 1116)	none
Balance subject to normal tax		$ 7,068 09	34. Balance of income tax (from 31 minus items 32 and 33)	$ 445 75
			35. Defense tax (10% of item 31). (See Instruction 35)	44 58
			36. Total income and defense taxes due (from 34 plus item 35)	$ 490 33

NOTE.—In order that this return may be accepted as meeting the requirements of the Internal Revenue Code, the data called for herein must be set forth FULLY and CLEARLY.

YY1

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, COMMISSIONS, BONUSES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

Name and address of employer—If a governmental unit, indicate whether "Federal," "State," or "Local"	2. Amount	3. Expenses (itemize)	4. Amount
burban Trans. Sys. Seattle	$ 6,000 00	40% Car Expense	$ 549 83
st Auto Co., Edmonds	300 00		
M. Yost Estate "	100 00		
Total of column 2 minus total of column 4 (enter as item 1, page 1)			$ 5,850 17

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal, interest on which is exempt from taxation	5. Interest on amount in excess of exemption
Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$ 198 95	All	x x x x x x x x x x
Obligations issued under Federal Farm Loan Act, or under such Act as amended			All	x x x x x x x x x x
Obligations of United States issued on or before September 1, 1917			All	x x x x x x x x x x
Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	x x x x x x x x x x
United States Savings Bonds and Treasury Bonds			$5,000	$
Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)	1,400 00	31 50	None	31 50
Total (enter as item 5, page 1)				$

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 8, page 1)
	$	$	$	$	$

nation of deductions claimed in columns 4 and 5

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

e (1) nature of business ; (2) number of places of business ; (3) business name and address if different from name and address on page 1)

otal receipts $

COST OF GOODS SOLD (to be used where inventories are an income-determining factor)		OTHER BUSINESS DEDUCTIONS	
Inventory at beginning of year	$	11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)	$
Merchandise bought for sale		12. Interest on business indebtedness	
Labor		13. Taxes on business and business property	
Material and supplies		14. Losses (explain below)	
Other costs (itemize below)		15. Bad debts arising from sales or services	
Total of lines 2 to 6	$	16. Depreciation, obsolescence, and depletion (explain in Schedule E)	
Less inventory at end of year		17. Rent, repairs, and other expenses (itemize below or on separate sheet)	
Net cost of goods sold (line 7 minus line 8)	$	18. Total of lines 11 to 17	$
Gross profit (line 1 minus line 9)	$	19. Net profit (or loss) (line 1 minus lines 9 and 18) (enter as item 9, page 1)	$

If the production, manufacture, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on lines 2 and 8 to ate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property (buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

YY2

16—17106

Form 872
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised February 1942)

DUPLICATE

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Feb. 10, 1944.

In pursuance of the provisions of existing Internal Revenue Laws

George W. Yost, a taxpayer

(~~or taxpayers~~) of Kinnaid, Washington, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (~~or taxpayers~~) for the taxable year (~~or years~~) ended December 31, 1940, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1945, except that, if a notice of a deficiency in tax is sent to said taxpayer (~~or taxpayers~~) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

George W. Yost Taxpayer.[1]

Taxpayer.[1]

[SEAL[2]] By

Harold N. Graves
Commissioner of Internal Revenue.

By C Rm 2/14/1944
(Date)

[1]This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

[2]If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

16—43870-2 U. S. GOVERNMENT PRINTING OFFICE

YY 3

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10)

1. Kind of property (If real estate, show location and brief description)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule E)	8. Gain or loss (column 4 plus column 7 minus the sum of columns 5 and 6)	Gain or loss to be taken into account: 9. Per cent	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔	$
								66⅔	
								66⅔	
								66⅔	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
Coach Corp.	Dec. 1/3			$	$	$	$	50	
Stock	1/28/55		25,500.00	24,501.43			1,602.23	50	801.12
Goodwill	same dates		2,603.65					50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$ 801.12

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (but in excess of net income for such year)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and "common trust funds"		5. Total net gain or loss to be taken into account in column 2, 3, and 4 of this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
Total net short-term capital gain or loss (enter as item 10 (c), page 1, amount of gain shown in column 5)	$	$	$	$	$	$	No net loss allowable (see Instruction 10)
Total net long-term capital gain or loss (enter as item 10 (f), page 1, amount of gain or loss shown in column 5)		$ 801.12		$	$	$ 801.12	$

COMPUTATION OF ALTERNATIVE TAX

Use only (1) If you had a net long-term *capital gain*, and item 24, page 1, exceeds $22,000
(2) If you had a net long-term *capital loss*, and such loss plus item 24, page 1, exceeds $22,000

Net income (item 28, page 1). (See Instruction 10)	$	10. Normal tax (4% of line 9)	$
Net long-term capital gain (item 10 (f), page 1)		11. Surtax on line 6. (See Instruction 29)	
Net long-term capital loss (item 10 (f), page 1)		12. Partial tax (line 10 plus line 11)	$
Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 10)	$	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
Less: Personal exemption. (From Schedule J-1) $		(b) 30% of net long-term capital loss (30% of line 2 (b))	
Credit for dependents. (From Schedule J-2) $		14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$
Balance (surtax net income)	$	15. Total normal tax and surtax (item 30, page 1)	$
Less: Interest on Government obligations, etc. (See Instruction 25) $		16. Tax liability (If a net long-term capital gain, on line 2 (a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1)	$
Earned income credit. (From Schedule K-1 or K-2). (See last. 19)			
Balance subject to normal tax	$		

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 10)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule E)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 10 (c), page 1)						$

Is the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page:

If any of such items were acquired by you other than by purchase, explain fully how acquired:

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Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
15	Real Estate	$ 56 02	13	Boy Scouts	$ 20 00
	60% Gas Tax & Car Lic.	42 00		M. E. Church	10 00
	Sales Tax	88 16		Red Cross	5 00
		186 18			35 00

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction G)

1. Source of income	2. Nature of income	3. Amount
		$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption

Status	Number of months during the year in each status	Credit claimed
e, or married and not living with husband or wife		$
ried and living with husband or wife	12	2,000 00
l of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year: Under 18 years old	Number of months during the year: Over 18 years old	Credit claimed
Nona, Daughter	12		$ 400 00
Rita, "			400 00

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is $3,000 or less, use only this part of schedule

ncome (item 20, page 1)	$
ed income credit (10% of net income, ove)	

(2) If your net income is more than $3,000, use only this part of schedule

Earned net income (not more than $14,000)	$ 2,925 89
Net income (item 20, page 1)	2,193 72
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $300)	300 00

QUESTIONS

ate your principal occupation or profession Bus Business

heck whether you are a citizen ☒ or a resident alien ☐.

id you file a return for any prior year? ...yes... If so, what was the latest year? 1939. To which Collector's office was it sent? Tacoma

e items of income or deductions of both husband and wife included in this return? yes

ate (a) Name of husband or wife if separate return was made Juanita Yost

(b) Personal exemption, if any, claimed thereon 1,222.63

(c) Collector's office to which it was sent Tacoma

6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.

7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no".) no (If answer is "yes," attach statement required by Instruction J.)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Geo. W. Yost
(Signature) (See Instruction E)

(Signature)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

scribed and sworn to by Geo. W. Yost

fore me this 13 day of March, 1941.

L. P. Ellington Notary Public
(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

scribed and sworn to before me this 13 day of March, 194...

L. P. Ellington Notary
(Signature and title of officer administering oath)

Geo. W. Yost
(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

U. S. GOVERNMENT PRINTING OFFICE 16—17101

YY5

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RM 1040 ... Department ... Revenue Service

(Auditor's Stamp)

UNITED STATES INDIVIDUAL INCOME TAX RETURN

Page 1

1941

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS NOT MORE THAN $3,000 AND CONSISTS *WHOLLY* OF SALARIES, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST, RENT, ANNUITIES, OR ROYALTIES.

For Calendar Year 1941

or fiscal year beginning ...., 1941, and ending ...., 1942

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Geo. W. Yost
(Name) (Use given names of both husband and wife, if this is a joint return)

(Street and number, or rural route)

Edmonds Snohomish Wash.
(Post office) (County) (State)

(Do not use these spaces)

File Code 604

Serial No. 306733

District

(Cashier's Stamp)

Cash—Check—M. O.

First Payment

$

THE TAX COURT OF THE U.S. DIV 11 DOCKET ... ADMITTED IN EVIDENCE NOV 2 1944 PETITIONER'S EXHIBIT B-2 RESPONDENT'S

INCOME	Amount	Deductible Expenses (Attach itemized statement)		
...aries and other compensation for personal services	$7600.00	$235.87	$7364.13	
...idends (40% of Car Exp. 5)			8114.00	
...erest on (a) bank deposits, notes, etc., $2011.94; (b) corporation bonds, $			2011.94	
...erest on Government obligations, etc.: From line (h), Schedule A, $31.50; (b) from line (i), Schedule A, $			31.50	
...ts and royalties. (From Schedule B)				
...uities				

ITEMS 7, 8, AND 9, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE.

Net short-term gain from sale or exchange of capital assets. (From Schedule F)		
Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)		
Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)	6400.00	
...profit (or loss) from business or profession. (From Schedule H) State total receipts, from line 1, Schedule H, $	761.48	
...me (or loss) from partnerships; fiduciary income; and other income. (From Schedule I) Separate Income: Dividends A.M.V. Est. 6,317.11 48.00	1442.58	
Total income in items 1 to 9		$26125.63

DEDUCTIONS

...tributions paid. (Explain in Schedule C)	$95.00	
...erest. (Explain in Schedule C)		
...es. (Explain in Schedule C)		
...es from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)	301.66	
...debts. (Explain in Schedule C) Ruth McGinnis Loan	9.00	405.66
...er deductions authorized by law. (Explain in Schedule C)		25719.97
Total deductions in items 11 to 16 Less: Juanita Yost Portion		12479.24
Net income (item 10 minus item 17)		$13240.73

COMPUTATION OF TAX

...income (item 18 above)		$13240.73	26. Normal tax (4% of item 25)	$452.46
...: Personal exemption. (From Schedule D-1)	$730.74		27. Surtax on item 22. (See Instruction 27)	1747.50
Credit for dependents. (From Schedule D-2)	800.00	1,530.74	28. Total (item 26 plus item 27)	$2199.96
			29. Total tax (item 28 or line 16, Schedule F)	$
...nce (surtax net income)		$11,709.99	30. Less: Income tax paid at source	$
...: Item 4 (a) above	$15.75			
Earned income credit. (From Schedule E-1 or E-2)	382.63	398.38	31. Income tax paid to a foreign country or U.S. possession. (Attach Form 1116)	
...nce subject to normal tax		$11311.61	32. Balance of tax (item 29 minus items 30 and 31)	$2199.96

...swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and ...est of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, ...to the Internal Revenue Code and the regulations issued under authority thereof.

...ed and sworn to by Geo. W. Yost

...me this 11th day of March, 1942

L. P. Ellington Notary
(Signature and title of officer administering oath)

G. W. Yost
(Signature) (See Instruction E)

(Signature)

...made by an agent must be accompanied by power of attorney. (See Instruction E.)

If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return.

...THIS RETURN WAS PREPARED FOR YOU BY SOME OTHER PERSON, THE AFFIDAVIT ON PAGE 4 MUST BE EXECUTED)

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10—94346

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal, interest on which is exempt from taxation	5. Interest on amount in excess of exemption, and dividends subject to surtax only
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$	All	xxxxxxxx
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended			All	xxxxxxxx
(c) Obligations of United States issued on or before September 1, 1917			All	xxxxxxxx
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness issued prior to March 1, 1941			All	xxxxxxxx
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			$5,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941			None	
(g) Dividends on share accounts in Federal savings and loan associations	xxxxxxxxxxxxx	xxxxxxxx	xxx	
(h) Total (enter as item 4 (a), page 1)				$

(i) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality	Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)
thereof (enter amount of interest as item 4 (b), page 1)	$	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 5)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 5, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
11	M.E. Church 10% Boy Scouts 15%	$ 25 00	13	Real Estate	$ 62 89
	School 40% Red Cross 10%	50 00		Poll & Personal Property Taxes	34 95
	Com. Fund 12% Charities 10%	20 00		Drivers Lic.	6 00
		95 00	✓	Sales Taxes	X 197 82

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

301.66

(1) Personal Exemption

Status	Number of months during the year in each status	Credit claimed
Single, or married and not living with husband or wife, and not head of family		$
Married and living with husband or wife	12	1500 00
Head of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year: Under 18 years old	Number of months during the year: 18 years or over	Credit claimed
Nona Yost, Daughter	12		$ 400 00
Rita " "	12		400 00

Reason for support if 18 years or over

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 24)

(1) If your net income is $3,000 or less, use only this part of schedule		(2) If your net income is more than $3,000, use only this part of schedule	
Net income (item 18, page 1)	$	Earned net income (not more than $14,000)	$ 3826 33
Earned income credit (10% of net income, above)		Net income (item 18, page 1)	13240 73
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $300)	382 63

QUESTIONS

1. State your principal occupation or profession: Trans. Mgr.
2. Name and address of employer: Suburban Trans. System, 310 Central Terminal Bldg., Seattle, Wash.
3. Did you file a return for any prior year? Yes. If so, what was the latest year? 1940. To which Collector's office was it sent? Tacoma, Wash.
4. If separate return was made for the current year, state:
   (a) Name of husband or wife: Sunnita Yost
   (b) Personal exemption, if any, claimed thereon: 769.26
   (c) Collector's office to which it was sent: Tacoma, Wash.
5. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
6. If return on cash basis, do you elect, under section 42, to include as income received in the current year the increase for current and prior years in the redemption price of noninterest-bearing obligations issued at a discount? ____ If so, attach statement listing obligations owned and computation of the accrued income. Report such income as interest in item 3 or 4, page 1, whichever applicable.
7. Did you receive during the taxable year any nontaxable income other than interest reported in Schedule A (see Instruction G)? No. If so, attach schedule showing source, nature, and amount of such income.
8. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? No. If so, attach statement required by Instruction J.

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DETACH PAGES 3 AND 4 IF NOT USED

Page 3

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 7)

1. Kind of property (If necessary, attach statement of descriptive details not shown below)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	8. Gain or loss (column 4 plus column 7 minus the sum of columns 5 and 6)	Gain or loss to be taken into account: 9. Per cent age	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔	$
								66⅔	
								66⅔	
								66⅔	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
coach Corp.	1/28/25	2/13/31	$185,700 00	$ 57,100 01	$	$	$ 12,799 99	50	64000 00
								50	
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$64000 00

SUMMARY OF NET CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (not in excess of net income for such year)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss to be taken into account in columns 2, 3, and 4 of this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
otal net short-term capital gain or loss (enter as item 7 (c), page 1, amount of gain shown in column 5)	$	$	$	$	$	$	No net loss allowable (see Instruction 7)
otal net long-term capital gain or loss (enter as item 7 (b), page 1, amount of gain or loss shown in column 5)		$ 64000 00	$	$	$	$ 64000 00	$

COMPUTATION OF ALTERNATIVE TAX

Use only: If you had a net long-term *capital gain*, and Item 22, page 1, exceeds $12,000, or
If you had a net long-term *capital loss*, and such loss plus Item 22, page 1, exceeds $12,000

let income (item 18, page 1). (See Instruction 7)	$	10. Normal tax (4% of line 9)	$
e) Net long-term capital gain (item 7 (b), page 1)		11. Surtax on line 6. (See Instruction 27)	
d) Net long-term capital loss (item 7 (d), page 1)		12. Partial tax (line 10 plus line 11)	$
rdinary net income (line 1 minus line 2 (e) or line 1 plus line 2 (d)). (See Instruction 7)	$	13. (a) 30% of net long-term capital gain (30% of line 2 (e))	
ess: Personal exemption. (From Schedule D-1) $		(b) 30% of net long-term capital loss (30% of line 2 (d))	
Credit for dependents. (From Schedule D-2)		14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$
alance (surtax net income)	$	15. Total normal tax and surtax (item 28, page 1)	$
ess: Item 4 (e), page 1 $		16. Tax liability (if a net long-term capital gain, on line 2 (e), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 29, page 1)	$
Earned income credit. (From Schedule E-1 or E-2). (See Inst. 7)			
alance subject to normal tax	$		

hedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 7)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 7 (c), page 1)						$

e the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page:

ny of such items were acquired by you other than by purchase, explain fully how acquired:

16—84048

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Schedule H.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

) nature of business ....: (2) number of places of business ....: (3) business name
d address if different from name and address on page 1 ....)
l receipts .... $

COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
used where inventories are an income-determining factor)		11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)	$
		12. Interest on business indebtedness	
ntory at beginning of year	$	13. Taxes on business and business property	
chandise bought for sale		14. Losses (explain below)	
r		15. Bad debts arising from sales or services	
rial and supplies		16. Depreciation, obsolescence, and depletion (explain in Schedule J)	
r costs (itemize below)		17. Rent, repairs, and other expenses (itemize below or on separate sheet)	
Total of lines 2 to 6	$		
inventory at end of year		18. Total of lines 11 to 17	$
cost of goods sold (line 7 minus line 8)	$	19. Total of lines 9 and 10	$
s profit (line 1 minus line 9)	$	20. Net profit (or loss) (line 1 minus line 19) (enter as item 8, page 1)	$

e production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on lines to indicate whether inventories are valued at cost, or cost or market, whichever is lower.
lanation of deductions claimed in lines 6, 14, and 17 ....

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

ME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION 9 (a)) (FURNISH NAMES AND ADDRESSES)		
Tricoach Sales Co. c/o Paul Stroot Henry Bldg., Seattle, Wash	$	$ 1472 57
INCOME FROM FIDUCIARIES (FURNISH NAMES AND ADDRESSES)		
	$	
INCOME FROM OTHER SOURCES (STATE NATURE)		
	$	
Total amounts in Schedule I. (Enter as item 9, page 1)		$ 1472 57

hedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (if bldgs., state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any panying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability person or persons for whom this return has been prepared of which I/we have any knowledge.

ibed and sworn to before me this .... day .... 194...

.... (Signature and title of officer administering oath)

T.B.W. Yost (Signature of person preparing the return)

.... (Signature of person preparing the return)

.... (Name of firm or employer, if any)

☆ U. S. GOVERNMENT PRINTING OFFICE: 1941 16—24346

ZZ4

In the United States Circuit Court of Appeals,
for the Ninth Circuit

(The Tax Court of the United States

Docket No. 4969)

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

Comes now the petitioner, George W. Yost, by his attorneys Alfred J. Schweppe and Maurice R. McMicken, and respectfully shows:

I.

JURISDICTION

George W. Yost and Juanita Yost are husband and wife, residing at Edmonds, Washington. They each filed separate income tax returns, reporting their respective one-half of the community income for the years involved, namely, for the calendar years 1940 and 1941, with the Collector of Internal Revenue for the District of Washington, at Tacoma, Washington, which said collection district is within

the jurisdiction of the United States Circuit Court of [148] Appeals for the Ninth Circuit, wherein this review is sought.

Petitioner seeks a review of the decision of The Tax Court of the United States, pursuant to the provisions of § 1141 and 1142 of the United States Internal Revenue Code.

II.

PRIOR PROCEEDINGS

On March 23, 1944, the respondent, in accordance with § 272 of the Internal Revenue Code, advised petitioner, George W. Yost, by registered mail that the determination of said petitioner's income tax liability for the taxable year 1940 disclosed a deficiency in tax of $75.44, and for the taxable year 1941 disclosed a deficiency of $1,071.70, or a total deficiency for said two years of $1,147.14 for said petitioner. A similar letter was sent to Juanita Yost.

Thereafter, on May 17, 1944, George W. Yost and Juanita Yost each filed a separate petition from his respective notice of deficiency with The Tax Court of the United States, the appeal of George W. Yost being Docket No. 4969 and the appeal of Juanita Yost being Docket No. 4970. The respondent filed his separate answer to each of said petitions on June 20, 1944.

By stipulation, the two cases were consolidated for hearing and decision, and were heard at Seattle, Washington, on November 2, 1944, upon an agreed

stipulation of facts and additional testimony adduced at the trial. On May 28, 1945, The Tax Court of the United States promulgated its findings of facts and [149] opinion in the consolidated cause (5 T. C. No. 16); and on May 28, 1945, The Tax Court of the United States entered its separate decision in each cause, ordering and deciding that there were deficiencies in income tax for the calendar year 1940 and 1941 in the respective amounts of $75.44 and $1,071.70 for each of said petitioners.

III.

NATURE OF THE CONTROVERSY

The question presented for review is succinctly stated as follows:

Did the amounts of $2,603.65 and $12,799.99 received by the marital community composed of George W. Yost and Juanita Yost in the years 1940 and 1941, respectively, from Richard B. Newell and Robert L. Newell (over and above the repayment by said Newells of their loans), constitute ordinary income of said marital community, of which petitioner's one-half share thereof was fully taxable to him in the respective years (as contended by respondent and held by the Tax Court), or were said amounts derived from the sale or exchange of capital assets and thus constituted long term capital gains to said marital community under Section 117 I.R.C., and as such only 50% of petitioner's one-half share thereof should

be taken into account for income tax purposes of petitioner in the respective years (as contended by petitioner)?

Tricoach Corporation, a Washington corporation with its principal office at Seattle, was organized in February 1935, by [150] George W. Yost, who had been engaged in the bus transportation business in suburban Seattle, by Richard B. Newell, who had been draftsman and chief engineer for Heiser's, Inc., a Seattle manufacturer of bus and truck bodies, and by Robert L. Newell, who had been selling bus and truck bodies throughout the Pacific Northwest for a Portland, Oregon, concern.

Its authorized capital was $50,000, composed of 1,000 shares of the par value of $50.00 each. Yost subscribed for 150 shares, paying $7,500.00 therefor, and each of the Newells subscribed for 5 shares, each paying $250.00.

During its entire operation, Robert was president and sales manager; Richard was vice-president, treasurer and chief engineer; and Yost was secretary.

The salary of each of the Newells was originally fixed at $250.00 per month, but in addition thereto they and Yost were each to receive adjusted compensation at the end of each year equivalent to one-third of the year's net profits after provision for payment of dividends on the outstanding stock.

The eleven months of 1935 resulted in a deficit of $1,068.18, which was wiped out in 1936 by Yost contributing $1,001.42 and each of the Newells

$33.38, being pro rata according to their stockholdings.

The year 1936 was profitable, Yost receiving in that year $10,140.95 as adjusted compensation and $11,649.64 in dividends, while each of the Newells received salary and adjusted compensation [151] totaling $13,440.95 (their salaries having been increased to $300.00 per month commencing in July) and $388.32 in dividends.

In December 1936, 764 additional shares were issued at par, 348 to Yost, and 208 to each of the Newells, making 924 shares outstanding and a paid-in capital of $46,200.00.

The year 1937 was also profitable, Yost receiving in that year $11,927.71 in adjusted compensation and $7,968.08 in dividends, and each of the Newells received salary and adjusted compensation totaling $15,527.71 and also $3,827.81 in dividends.

In December 1937, the remaining 76 shares were issued at par, 12 shares to Yost and 32 shares to each of the Newells, making the stockholdings then, Yost 510 shares and each of the Newells 245.

By the end of 1937, Yost, on his original investment in Tricoach of $7,500.00, had received in dividends and adjusted compensation a total of $41,686.38, out of which he had paid to Tri-coach $1,001.42 as his pro rata of the 1935 deficit and $18,000.00 for 360 additional shares of stock, leaving him with a net amount of $22,684.96 and he owned 510 fully paid up shares, or 51% of the stock of Tricoach.

In March 1936, Heiser's, Inc. made an assign-

to enter into the agreement with Pacific; and to enter into a lease and option agreement with the Newells in regard to Tricoach's machinery and equipment.

On August 3, 1938, the separate agreements between Yost and the two Newells were executed and the four-party agreement also executed.

In 1940 the Newells paid to Yost, under their respective agreements, the following amounts, which were applied by the Yosts as follows: [154]

	From Robert L. Newell	From Richard B. Newell	Total
Payments received	$2,603.65	$2,603.65	$5,207.30
Applied toward payment of their loans	1,301.83	1,301.82	2,603.65
Treated as a community capital gain	$1,301.82	$1,301.83	$2,603.65

On June 26, 1940, the Yosts received $25,500.00 and the two Newells each $12,250.00 from Tricoach as liquidating dividends. As the Yosts' stock had cost them $25,500.00 plus $1,001.42 as their share of the 1935 deficit, it had a basis in their hands of $26,501.42. Respondent, in determining the deficiencies for 1940, allowed as a community deduction 50% of said long term capital loss of $1,001.42, or $500.71, and allowed each of the Yosts a deductible loss of one-half thereof, or $250.35, which item is not in controversy.

In 1941 the Newells paid to Yost, under their respective agreements, the following amounts, which were applied by the Yosts as follows:

	From Robert L. Newell	From Richard B. Newell	Total
Payments received	$9,286.00	$9,286.00	$18,572.00
Applied toward balance of loans	2,886.00	2,886.01	5,772.01
Treated as a community capital gain	$6,400.00	$6,399.99	$12,799.99

In 1942 the Newells each paid Yost $610.34, making the total received by the Yosts from the two Newells, $224,999.98. [155]

In petitioner's 1940 income tax return, he reported as a long term capital gain $1,301.82, being his community one-half of the $2,603.65 received from the two Newells in 1940 after the above mentioned application on their indebtedness, and as such long term capital gain, there was taken into account for tax purposes, only 50% thereof, or $650.91.

Respondent, in his deficiency letter, held that said amount of $1,301.82 received by petitioner in 1940 was not a capital gain but was ordinary income taxable in full, thereby increasing petitioner's taxable income for 1940 by $650.91, and the Tax Court sustained respondent's action in so doing.

In petitioner's 1941 income tax return, he reported as a long term capital gain $6,400.00, being his community one-half of the $12,800.00 received from the two Newells in 1941 after the above mentioned application on the balance of their indebtedness, and as such long term capital gain, there was taken into account, for tax purposes, only 50% thereof, or $3,200.00.

Respondent, in his deficiency letter, held that said amount of $6,400.00 received by petitioner in 1941 was not a capital gain but was ordinary income taxable in full, thereby increasing petitioner's taxable income for 1941 by $3,200.00, and the Tax Court sustained respondent's action in so doing.

Petitioner contends that such payments received in each of the years 1940 and 1941 (over and above repayments on the loans) were derived from the sale or exchange of capital assets, and thus [156] constituted long term capital gains, and that only 50% of petitioner's community one-half interest thereof was taxable to him.

IV.

ASSIGNMENTS OF ERROR

That petitioner, George W. Yost, being aggrieved by the opinion and decision of The Tax Court of the United States in this proceeding, hereby petitions for a review of said opinion and decision by the United States Circuit Court of Appeals for the Ninth Circuit, and for the correction of manifest errors which therein occurred and intervened to petitioner's prejudice. The errors committed by The Tax Court of the United States which are relied upon by petitioner as the basis of this petition for review are as follows:

That The Tax Court of the United States erred:

1. In holding and deciding that the amounts of $2,603.65 and $12,799.99 received by the marital

community composed of George W. Yost and Juanita Yost in 1940 and 1941, respectively, from Richard B. Newell and Robert L. Newell (over and above the repayment by said Newells of their loans), constituted ordinary income and that petitioner's community one-half interest thereof was fully taxable to him.

2. In failing to hold and decide that the amounts of $2,603.65 and $12,799.99 received by the marital community composed of George W. Yost and Juanita Yost in 1940 and 1941, respectively, from Richard B. Newell and Robert L. Newell (over and above the repayment by said Newells of their loans), were derived from the [157] sale or exchange of capital assets and thus constituted long term capital gains, and that only 50% of petitioner's community one-half interest thereof was taxable to him.

3. In ordering and deciding that there are deficiencies in petitioner's income taxes of $75.44 for 1940 and $1,071.70 for 1941.

4. In failing to order and decide that there is a deficiency in petitioner's income tax for 1940 of $2.57 and no deficiency for 1941.

Wherefore, George W. Yost petitions that said opinion and decision of The Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court

and be transmitted to the Clerk of said Court for filing, and that appropriate action be taken, to the end that the errors complained of may be reviewed and corrected by said Court.

MAURICE R. McMICKEN
ALFRED J. SCHWEPPE
Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed Aug. 24, 1945. [158]

The Tax Court of the United States

Docket No. 4969

GEORGE W. YOST,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

NOTICE OF FILING PETITION FOR REVIEW

To John P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, Internal Revenue Building, Washington, D. C.

Sir:

Please take notice that the undersigned is mailing today to The Tax Court of the United States, Washington, D. C., to be filed with the Clerk thereof, the Petition of George W. Yost, a copy of which

is annexed hereto, for review by the United States Circuit Court of Appeals, for the Ninth Circuit, of the Decision of The Tax Court of the United States entered in the above cause upon the records of said Tax Court on May 28, 1945.

Dated: August 22, 1945.

/s/ MAURICE R. McMICKEN

/s/ ALFRED J. SCHWEPPE,
Counsel for Petitioner

Personal service of the above and foregoing Notice, together with a copy of the Petition for review and Assignments of Error mentioned therein, is hereby acknowledged this 24th day of August, 1945.

/s/ J. P. WENCHEL
Chief Counsel for the Bureau
of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Aug. 25, 1945. [159]

In the United States Circuit Court of Appeals for the Ninth Circuit

T. C. Docket No. 4969

GEORGE W. YOST,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

T. C. Docket No. 4970

JUANITA YOST,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ORDER

Motion for preparation of the records on review in the above causes and the printing thereof, having been made by counsel for the above named petitioners, and consented to by counsel by respondent,

It Is Hereby Ordered

1. That the certified records sur petitions for review shall be made upon separate designations for record on review in the usual course and that a complete transcript of record be filed only in the case of George W. Yost, v. Commissioner of Internal Revenue, T. C. Docket No. 4969, which shall include, inter alia, a copy of the stipulation of facts filed with The Tax Court of the United States in the consolidated [160] causes and a copy of the

Official Reporter's Minutes of the Proceedings and testimony and exhibits adduced in evidence at the consolidated hearing before The Tax Court on November 2, 1944, and a copy of the Order entered hereon by this Court; and that an abbreviated record be filed in the case of Juanita Yost v. Commissioner of Internal Revenue, T. C. Docket No. 4970, which shall contain only the following documents; Docket Entries; petition and answer; petition for review and notices; orders of enlargements of time, if any; and the designation for record.

2. That the two cases be docketed in the usual course but that only the complete record relating to the case of George W. Yost v. Commissioner of Internal Revenue, T. C. Docket No. 4969 (including any subsequent documents filed in this case prior to printing) shall be printed and only said case shall be briefed and presented to the Court in argument for decision, but that the matters contained in the abbreviated record of the related case may be referred to by counsel in their respective briefs filed herein and on oral arguments and considered by the Court with the same force and effect as if included in the printed record on review herein.

3. That the abbreviated record in the case bearing T. C. Docket No. 4970, remain unprinted in the office of the Clerk of the reviewing Court herein and further proceedings thereon be suspended until the decision of The Tax Court of the United States in the case of George W. Yost v. Commissioner of

Internal Revenue bearing T. C. Docket No. 4969, shall become final within the meaning of Section 1140 of the Internal Revenue Code, and upon such decision becoming final in such case (T. C. Docket No. 4969), either of the parties in the cause bearing [161] T. C. Docket No. 4970, may, upon formal notice to the other and upon the basis of this stipulation and a certified copy of the said final decision in the case of George W. Yost (T. C. Docket No. 4969), apply for an order directing the entry of judgment in the case bearing T. C. Docket No. 4970, corresponding to the result in the case of George W. Yost (T. C. Docket No. 4969).

4. That the Clerk of this Court be instructed to transmit two certified copies of the order of this Court entered hereon to the Clerk of the Tax Court of the United States at Washington 25, D. C., one of which to be by him incorporated in the transcript of record on review in the case of George W. Yost v. Commissioner of Internal Revenue bearing T. C. Docket No. 4969, as certified and transmitted to this Court.

Done this 12th day of September, 1945.
(Signed) WILLIAM DENMAN,
Judge

A true copy. Attest. Sept. 12, 1945.
/s/ PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Sept. 12, 1945. (s) Paul B. O'Brien, Clerk.

[Endorsed]: T.C.U.S. Filed Sept. 18, 1945.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD ON REVIEW

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the petitioner herein:

1. Docket entries of the proceedings.

2. Pleadings:

   (a) Petition, including annexed copy of deficiency notice and statement attached thereto.

   (b) Answer.

3. Opinion of Tax Court.

4. Decision of Tax Court.

5. Stipulation for consolidation and stipulation of facts, together with photostatic or other copy of all exhibits attached and made a part thereof.

6. Copy of Official Reporter's Minutes of Proceedings and testimony adduced at hearing before The Tax Court on November 2, 1944, pages A and 1 to 35 both inclusive. [163]

7. Photostatic copies of respondent's exhibits A-1 and A-2.

8. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

9. Order for the Records and Printing.

10. Orders enlarging time for the preparation of the evidence and for transmission and filing of the transcript of record on review, if any.

11. This designation.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

ALFRED J. SCHWEPPE
657 Colman Building
Seattle 4, Washington

MAURICE R. McMICKEN
827 Central Building
Seattle 4, Washington
Counsel for Petitioner

Service of a copy of the within Designation for Record is hereby admitted this 17th day of Sept. 1945.

J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue
Attorney for Respondent

[Endorsed]: T.C.U.S. Filed Sept. 17, 1945. [164]

The Tax Court of The United States
Washington

Docket No. 4969

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 164, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 1 day of Oct. 1945.

(Seal) B. D. GAMBLE
Clerk, The Tax Court of the United States.

[Endorsed]: No. 11155. United States Circuit Court of Appeals for the Ninth Circuit. George W. Yost, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed October 13, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In The United States Circuit Court of Appeals
For the Ninth Circuit

No. 11155

(T. C. Docket No. 4969)

GEORGE W. YOST,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STATEMENT OF POINTS AND DESIGNATION OF RECORD TO BE PRINTED

Comes now the Petitioner on Review herein and adopts as his Statement of Points on which he intends to rely on the Review herein the Assignments of Errors included in his Petition for Review within the Transcript of Record, and he also desig-

nates for printing the entire Transcript of Record transmitted to this Court by the Clerk of the Tax Court of the United States, together with this Statement and Designation.

MAURICE R. McMICKEN
ALFRED J. SCHWEPPE
Counsel for Petitioner

[Endorsed]: Filed Oct. 22, 1945. Paul P. O'Brien, Clerk.